METROPOLITAN TORONTO

AUTO WATCHDOG COMMITTEE

REPORT

TO THE
LEGISLATION AND LICENSING COMMITTEE
THE MUNICIPALITY OF METROPOLITAN TORONTO

JUNE 1984

The Municipality of
Metropolitan Toronto

Metropolitan Clerk's Department
City Hall, Toronto, Ontario, Canada M5H 2N1
Telex: 06-23472
Telephone: 947-8017

Walter J. Lotto, *Metropolitan Toronto Clerk*
Daniel Crombie, *Deputy Metropolitan Clerk*

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JUN 22 1984
CLERK'S DEPT.

Mr. J.J. Poots, Clerk
City of Scarborough
150 Borough Drive
Scarborough, Ontario
M1P 4N7

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AUTO WATCHDOG COMMITTEE REPORT

Attached is a copy of the Auto Watchdog Committee Report which will be tabled at the September 11, 1984, meeting of the Legislation and Licensing Committee with a request that the Committee consider the report at its meeting scheduled to be held on Tuesday, September 25, 1984.

The Auto Watchdog Committee was pleased to have had the opportunity to review its report with the Honourable Robert G. Elgie, M.D., Ontario's Minister of Consumer and Commercial Relations. The Minister and his staff were most receptive to the contents of the report and provided the Committee with some very valuable suggestions. Further, Dr. Elgie was receptive to helping expedite the implementation of those recommendations which fall outside the jurisdiction of the Metropolitan Toronto Council.

W.J. Lotto
Metropolitan Toronto Clerk.

June 18, 1984

E. Berriman/gp
Attachment

MEL LASTMAN, ***Chairman***
Mayor, City of North York, and a Member of the Metropolitan Toronto Council

FRANK FAUBERT, ***Member***
Controller, City of Scarborough, and a Member of the Metropolitan Toronto Council

TONY O'DONOHUE, ***Member***
Executive Alderman, City of Toronto, and a Member of the Metropolitan Toronto Council

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MANDATE OF COMMITTEE

The Metropolitan Legislation and Licensing Committee at its meeting held on September 13, 1983, appointed a Sub-Committee comprised of Mayor Mel Lastman, Chairman, Controller Frank Faubert and Executive Alderman Tony O'Donohue, to undertake the following and submit a report thereon to the Committee, such report to include funding requirements:

(a) Review of existing legislation enacted in Canada and the U.S.A. to protect citizens with respect to mechanical problems in new automobiles to determine whether or not there is a need for similar legislation in the Province of Ontario to protect the citizens of the Metropolitan Toronto area;

(b) Review of existing legislation covering the automobile repair industry, in the Province of Ontario and the Metropolitan Toronto area, and the responsibilities of Provincial Ministries for the enforcement of such legislation; and to determine whether or not the Metropolitan Toronto Council, through the Metropolitan Licensing Commission or the Legislation and Licensing Committee has sufficient powers to address any problems which may exist in this area; and

(c) Meet with appropriate officials of the Federal Government to establish whether or not the regulation of new automobiles and the automobile repair industry is under their jurisdiction; whether there is federal legislation covering this area; and, if so, the Ministries responsible for the enforcement of such legislation.

MEETING No. 1

The Committee held a public meeting, Thursday, December 7th, 1983 at 3:00 p.m. At that time, we viewed video tapes gathered from around Canada and the United States which dealt with the Lemon Law. We received correspondence from Representative John J. Woodcock, House of Representatives State of Connecticut, who is commonly referred to as the Father of the Lemon Law. Further we received communication from a variety of government officials and consumer observers.

We received oral or written submissions from the following:

- Mr. Jeffrey D. Gray, Barrister and Solicitor,
  Automobile Protection Association
- Mr. David Mitchell, Director
  Investigations & Enforcements Branch
  Business Practices Division
  Ministry of Consumer and Commercial Relations
  Province of Ontario
- Mr. William Keen, Director
  Compliance Branch
  Ministry of Transportation and Communications
  Province of Ontario
- Staff Inspector John Getty
  Auto Squad
  Metropolitan Toronto Police
- Mr. Terry M. Burtch, Chief
  Planning Program Evaluation
  Road Safety and Motor Vehicle Regulation
  Transport Canada

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- Mr. Ron Roberts, Senior Communications Advisor
  Consumer and Corporate Affairs
  Government of Canada
- The Metropolitan Solicitor

Based on these submissions, which are attached, and further research the Committee had done we decided there was a need for the Committee to pursue several other avenues with regard to the new and used car sales and repair industries in Canada. We felt compelled to hear from both the public and the industry to determine how large the potential problem is for the consumer.

An automobile is the largest or second largest expenditure in many consumers' lives, but they may be wasting their money on repairs. In New York State alone, during 1980/81, 27.9% of registered auto repair shops examined had their registrations suspended or revoked for offences. New York's "Ghost Car" program found that .74¢ on every dollar went for unsatisfactory repairs. The research showed that if a woman was driving the ghost car there was a greater chance of being ripped off. In California, the ghost car program uncovered illegal activities in 60% of its cases. To our knowledge, no such figures are available in Canada.

Consumers may not be aware of these statistics, but they are aware that they are at the mercy of repair shops and they are scared. Automobile complaints are the most frequent types of complaints received by consumer organizations. In the short time this committee has been in existence, all the offices of the members of the committee have received letters and many phone calls from worried consumers. They want to know what we are going to do for them. They are telling us that not all lemons are grown, some are built, and that we have horse and buggy consumer laws with space age automobiles.

Consumers are entitled to protection from dishonest, deceptive and fraudulent practices and basic incompetence. Repair shops too, are entitled to protection against unwarranted complaints. Great potential for abuse exists, and the problem is mainly one of consumer expertise. We are all easy victims of incompetence and even rip-offs because today's automobiles are sophisticated beyond the average person's comprehension. Men are no better able to avoid being ripped off than women are. The committee feels that most garages are honest and have competent people.

We have licensed mechanics in most garages but it may not be a licensed mechanic who is working on your car. It may be an apprentice or someone pumping gas as a part-time job. Even if it is a licensed mechanic, many consumers don't know if they need an ignition wire or a rebuilt engine.

Under present law, if a consumer has been overcharged he or she still has to pay for the repairs before getting his or her automobile back from the garage. In some jurisdictions he or she can get the car back by paying the amount on a written estimate and settling the higher bill or so called five o'clock surprise at a later date. Consumers do not have this protection in Ontario.

New car dealers, especially during hard economic times do not make much money on car sales, they make their money on service. This committee has been told that a service advisor who takes down customer work orders may be paid on an incentive basis. Mechanics or service advisors may be paid a commission on the parts they sell. Both may make extra money by suggesting that a car owner get more work done. The service advisor may not be a mechanic and consumers rarely see mechanics in dealerships.

Traditional extras that may be suggested to car owners getting minor repairs are: alignments, ball joints, shocks, springs, tires, brakes, fan belts, filters, hoses, ignition parts and so on. It's hard for a consumer to know if he or she really needs all these extras. Muffler shops are now selling brakes, shocks and springs. When a driver gets a new muffler it may be suggested that he needs brakes, shocks or springs. We must insist that service stations, transmission, tune-up and other specialty shops do not do unnecessary or sub-standard repairs.

Repair shops must know that Metropolitan Toronto and the Government of Ontario are concerned about consumers and want to know how the repair business is working. The ghost car system

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has worked so well in New York, California and Ontario in the past, and is the best deterrent to fraud and incompetence we know.

MEETING No. 2

In order to address these and other problems, and to learn more about the public's attitude towards this area of consumer concern, the Auto Watchdog Committee held a further meeting on Thursday, January 26th, 1984. Representative John J. Woodcock of the State of Connecticut, was kind enough to travel to Metropolitan Toronto at no cost to the committee, (except to take him to dinner), to make a presentation with respect to the Lemon Law which he authored. Representative Woodcock also made comments relating to his new Lemon Law called "Lemon Law II" which he had recently introduced into the general assembly of the State of Connecticut. Representative Woodcock discussed statistical data to support the fact that there are problems in the U.S. with new cars and that there is a ground swell of support from the general public for the Lemon Law. A copy of Representative Woodcock's submissions are attached.

The media estimated at the time that about 300 members of the general public attended. The committee heard from 21 people who outlined problems with the new and used car sales industry from a most personal perspective. Anyone who wanted to be heard was allowed to speak, except those whose cases were before the courts. The committee heard from one gentleman who had to spend four years of his life trying to get his new car repaired. Another consumer had to return eleven times to a dealer to fix the same idling problem with his automobile. Each time the problem was allegedly repaired, the problem either returned or manifested itself in another fashion. For example, at one point the driver could not shift gears properly unless his air conditioning was turned off. Time and time again the consumer tried in vain to have this problem repaired. The high idle that was not properly fixed may have added to a brake problem and a problem with the transmission which subsequently developed. This was a case of a brand new thirteen thousand dollar car built by an international company with a known reputation, having four brake failures, a twelve hundred dollar transmission failure, two power window failures and a constant idling problem within the first 2 years of ownership. At the time of this consumer's submission to the committee his car still needed a brake job, the power windows needed fixing and he was desperate to get the idling fixed before all the problems started recurring again with the transmission, the air conditioning and the brakes.

The committee heard from another consumer whose car burnt oil and had a rough idle from the time of purchase on. The car would stall at intersections. At one thousand kilometres, the odometer broke and the alternator panel gauge broke. At two thousand kilometres the car needed new piston rings and bearings

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and had to be in the shop for two weeks. Then the paint began coming off in two places and the brakes began failing. At the time of this consumer's submission to the committee a new half block was being installed in the car. This consumer's car is less than a year old and has been out of service for seven weeks.

The committee heard many, many more submissions from frustrated consumers with regard to new cars, used cars and car repairs. One consumer actually brought laughter to a group of very frustrated people when he recounted the case of sitting in his automobile for three hours at a car dealership waiting to have repairs done. When he went to the service advisor and asked what the status of his car was, the service advisor told him that it was all done, the repairs had been finished when, in fact, no one had even looked at his car.

How can consumers tell if they've been ripped off? Frankly, they can't. If an unneeded repair is done, there is no way for the consumer to tell. The only remedy for these types of rip-offs is prevention and deterrent. There are a few statistics in Canada kept, but a San Francisco District Attorney indicates that in one three month period three hundred and thirty five (335) out of five hundred and forty (540) customers were charged for more time based on a flat rate manual than the mechanic actually worked. In a Wisconsin survey, 33,267 hours of body work was performed, but customers had to pay for 45,631 hours. This is almost 50% more hours billed than actually worked.

MEETING No. 3

Having heard the compelling testimony from consumers the committee felt it would be wise to hear from members of the Automotive Sales and Repair Industries. In addition to using media advertising and press releases the opinions of those in the automobile sales and service industry were actively solicited by mail. At a meeting on Thursday, February 23, 1984, the Auto Watchdog Committee heard from those members of the industry who wished to make submissions.

The Committee senses that most new car dealers would welcome a dispute arbitration program. The committee was most impressed with the frankness of one member of the new car sales industry who indicated that consumers can expect the greatest number of lemons ever produced because of current demand for smaller fuel efficient cars and the domestic car industry's rapid response to this stated demand.

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This dealer sold foreign cars. The committee also heard words of support for a mediation/arbitration program, but not supporting implementation of John Woodcock's Lemon Law. It appeared that the auto industry might not support compulsory arbitration. These were naturally views supporting the status quo and rejecting the Lemon Law concept. The submissions of those who appeared at the February 23/84 meeting are attached.

The Auto Watchdog Committee feels that it has left no stone unturned in seeking the input of members of the general public, consumer groups and members of the new and used car sales and repair industries. The Committee has done its research by examining legislation in several jurisdictions including New York, California, Quebec and Ontario. Based on the submissions the committee has received, it is rather shocked that there is no Lemon Law anywhere in Canada. There is no used car warranty except in Quebec and there are no specific repair disclosure laws except in the Province of Quebec. The committee is very supportive of the deterrent factor of the ghost car program. Although there is an Ontario ghost car program, it does not operate year round and generally only two cars are operating at any given time for the entire province.

Therefore the committee, based on its mandate, its research and the submissions it received felt compelled to address all aspects of the automotive industry. The buying and repairing of automobiles is the No. 1 consumer complaint in North America but

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if a consumer happens to buy a lemon in Ontario, the manufacturer has no obligation to replace that vehicle or refund the purchase price. If a consumer buys a toaster, a typewriter or a telephone and it doesn't work, that consumer can usually receive a replacement or a refund.

In fact, the committee sincerely feels that its suggested legislative initiative is a must and would be of great help to the car industry. Not so many years ago the Chrysler Corporation was alleged to be on the verge of bankruptcy, but through hard work, quality of work and the offering of extended warranties, it built consumer confidence to the point where it is a viable company now. We feel that it is in the best interests of the entire automobile industry to stand behind their products, create consumer confidence and sell more cars.

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The Metropolitan Toronto Legal Department informs us that the following 12 points fall within Metro's jurisdiction. We recommend amendment of Schedule 25 to By-law No. 107-78, being the regulations dealing with automobile repair shops. These provisions would include:

1. Posting schedule of labour rate and charging method, whether by actual time or flat rate manual and mechanics' or other employees' commission, bonus or other consideration for parts or service sold.
2. Owner to file schedule of said labour and/or flat rates and considerations with the Licensing Commission;
3. Said schedule of labour and/or flat rates filed with the Licensing Commission may not be altered or amended unless 15 days notice of owner's intention to change schedule is given to Commission;
4. No owner shall demand or request payment for services other than in accordance with the applicable schedule of rates filed with the Commission;
5. A written estimate shall be provided prior to carrying out any repairs setting out the cost of services and parts to be provided. Should a consumer wish to waive his/her right to such an estimate it must be done in the consumer's own handwriting. Should the mechanic wish to make additions or modifications to the estimate he/she must contact the consumer by telephone and record the phone number and time of call authorizing additional work and charges;
6. The schedule of rates shall indicate the cost, if any, of providing a written estimate;
7. Upon completion of repairs, every repair shop shall provide a written, itemized bill setting out the costs of all services and parts provided;
8. If requested by the owner of a motor vehicle, the repair shop shall deliver at the same time as the automobile is returned all parts that have been replaced, except where repairs are done without charge,

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or if the parts are needed for exchange or retooling or when the part is subject to warranty and must be returned to the manufacturer or distributor. If the consumer does not take the old parts, the repairer must keep them for 48 hours in the event the consumer subsequently requests them;

9. Where a written estimate has been provided to the owner of an automobile with respect to the cost of services and parts to be provided by the repair shop, the cost shall not exceed the authorized estimate.

10. No owner shall perform any repair work other than as set out in original estimate without providing a further written estimate in accordance with the provisions regarding written estimates, or contacting the consumer by telephone and recording the phone number and time of the call giving authorization for additional work and charges;

11. Every repair shop shall, upon request of a customer, provide a copy of the applicable schedule of rates filed with the Licensing Commission;

12. Every repair shop shall ensure all stationary, forms, bills, invoices, statements, and any other printed or written advertising material, including any published advertising in a newspaper, magazine, or other publication bear in clearly legible figures and letters the name and address and Metropolitan licence number of the owner or operator of the automobile repair shop.

In the following recommendations, and in all our deliberations, the Committee tried diligently to stay within its mandate. At times, however, our research, and indeed, the submissions from the public forced us to stray. Therefore we are compelled to include some recommendations which might be interpreted to fall outside our terms of reference.

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LEMON LAW - ARBITRATION/MEDIATION PROGRAM

The committee was most impressed with the so-called "Lemon Law" which is gaining wide acceptance in the United States; but is also sensitive to the automobile industry's opinion that it can set up a voluntary arbitration program which would serve consumers just as well. In order to explore more fully the possibilities in this area, we suggest that the Province of Ontario be asked to establish a 3-year pilot arbitration project for the Metropolitan Toronto area to oversee disputes between consumers and the new car industry. Those hired for the pilot project would be retained on 3-year contracts only.

This arbitration board would be set up only if all auto manufacturers/dealers in Ontario agree to its establishment and to comply with its rulings. If such assurances were not forthcoming we would recommend the passing of a Lemon Law to guarantee consumers impartial arbitration programs. An arbitration board would be established and would be comprised of one mechanic, one lawyer or other judicial officer, and one lay person to hear cases in which a consumer feels his/her car is a "lemon". The criteria for the operation of this pilot project would be substantively the same as the criteria which we would recommend for a more formal Lemon Law program should the pilot project not succeed. In either case, arbitration board members could not be associated with any manufacturer, dealer or be seen to have any other vested interest in the automotive industry. Further, board members must be acceptable

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to Metropolitan Toronto Council and/or the provincial government. Arbitration hearings would take place in the evening as well as day-time hours to accommodate all consumers.

The committee felt compelled to address the issue of used cars and, therefore, is recommending that this pilot arbitration concept hear cases involving both new and used cars. Before a case is heard by the board, the individual consumer would have to pay a $50.00 application fee and the manufacturer would have to pay a $250.00 application fee in the case of new cars. In the case of used cars when the purchase price is in excess of $3,000, the consumer would pay a $50.00 application fee and the dealer would pay a $160.00 application fee.

These funds would go to the operation of the arbitration board. Board members would receive a fee of $100.00 each for sitting to arbitrate a new car dispute and $70.00 each for arbitrating a used car dispute. The fees for the arbitration board will be paid by the consumer/complainant and the manufacturer. Since we cannot foresee the length of time it will take the board to review a dispute, we feel the fees should be reviewed in 6 months.

CRITERIA FOR DISPUTE RESOLUTION

Consumers and manufacturers should only appear before our pilot arbitration program under certain circumstances. These

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circumstances would be very similar to those tried, tested and found to be workable in at least 21 American states. We feel, for example, that the purchaser of a new car should be protected from owning a lemon for 1 year or 12,000 miles, whichever comes first. The manufacturer or agent should have four chances to fix the same fault or 30 accumulative days after which the car may be deemed a lemon. If the car is ruled a lemon under this criteria, the consumer should receive a new car, or his/her money back less an allowance for use. The allowance for use can be determined by multiplying the price of the car times the mileage over 100,000. For example, with a $10,000 car which had been driven 1,000 miles the fraction would appear as follows: $\$10,000\ x\frac{1,000}{100,000}$. Therefore, the allowance for use would be $100.00. Further, consumers should receive back so called collateral expenses involved such as tax, licenses, dealer preparation, and so on. The car can only be deemed to be a lemon if the defect deminishes its use, value and/or safety. During the warranty period should the automobile break down, the manufacturer should pay such charges as towing, taxis, bus fare, etc., if the car is deemed to be a lemon under the lemon law criteria.

We would seek provincial legislation to establish a binding arbitration program in Ontario. If the parties to a dispute opt for appearing in front of the arbitration board, they must agree that the decision of the board will be binding on both sides. The dispute should be settled within 40 days. Prior to opting for arbitration, consumers must be informed of other rights and

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remedies available to them. The sources and nature of this information would include, but not be limited to:

1. The Auto Watchdog informing consumers of other dispute resolution mechanisms in existence (ie. courts, consumer associations, government departments and agencies, etc.).
2. The Auto Watchdog compiling and distributing records and statistics on all settlements and complaints to inform consumers and the industry of the outcome of dispute resolution mechanisms.
3. The dealers and/or manufacturers distributing information outlining consumers' rights under arbitration, Lemon Law, or other dispute resolution mechanisms at dealerships, in owners' manuals and other appropriate means.

We feel that it is only fair that the warranty be extended for one day for every day that the car is out of service or in the repair shop. We would be remiss if we did not deal with the question of what happens to returned lemons. We feel that dealers and/or manufacturers have an obligation to inform consumers that a car is a returned lemon if they wish to sell it. Further, dealers and/or manufacturers must keep records of the number of times a car is in the shop, the nature of the complaint and the length of time the car is out of service.

FURTHER PROTECTION FOR NEW CAR BUYERS

In the course of our deliberations we have been able to isolate further problems consumers are having in the purchase of new cars. We feel we have been able to address these and are in the position to suggest appropriate remedies.

Several of our remedies deal with the question of warranties, which strictly speaking may not fall within our mandate. First, we feel that all warranties should be written in plain understandable language. In order to aid the consumers with any warranty disputes, we feel all work orders should be provided every time the car is in the shop and should include detailed descriptions of all parts, labour and tax, and the length of time the car was in the shop. Should a dealer and/or manufacturer fail to repair the car during the warranty for any reason whatsoever, the consumer should ideally have the right to get the car repaired elsewhere and get reimbursed from the dealer/manufacturer providing the consumer had his/her car in the shop for a problem that was not indeed fixed.

The committee feels that any ambiguous statements in the new car purchase contract should be interpreted in the consumer's favour. Further, consumers should be aware that when a purchase price is agreed upon, and a trade-in price on the consumer's old car is agreed upon, these prices form part of the contract. Therefore, the consumer may cancel the contract if either price is amended

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because of delays in delivery or any other such logistical reasons.

Two final points of concern, which are also not under our terms of reference, deal with replacement parts and options. First, we feel that if a dealer cannot obtain substitute or replacement parts within a reasonable period of time he should provide a courtesy car for the consumer. Second, we feel that if the dealer sells options to a consumer, that the dealer has actually bought from a sub-contractor, then the dealer should be responsible for the repairs and warranty of those options.

USED CAR WARRANTY

The committee was most impressed with the used car warranty system in existence in Quebec. We feel that because of the economy more people must purchase used cars. However, a good used car is often the price that a new car was only a few years ago. Therefore we feel that it is incumbent upon this committee to make recommendations to protect those consumers who buy used cars.

Cars should be divided into four classes:

a) less than two years old and less than 40,000 km.
b) less than three years old and less than 60,000 km.
c) less than five years old and less than 80,000 km.
d) all others.

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Each class of car then would be protected by a warranty as follows:

a) 6 months or 10,000 km whichever comes first

b) 3 months or 5,000 km whichever comes first

c) 1 month or 1,700 km whichever comes first

d) 7 days.

When selling a used car the dealer must affix a label to the car which provides consumers with all the information possible about that car. The label would indicate whether the car falls into class a, b, c or d, characteristics of the warranty offered, the repairs done since the dealer has owned the car, the price, the number of miles or kilometres, the model, year, serial number, make and size of engine. Further, the label should inform the consumer whether the car has been a taxi, driving school car, police car, ambulance, leased automobile, demonstrator, or insurance write-off. The identity of previous owners should be on the label, including the name and address of the last owner.

If the consumer believes any of these declarations to be false the dealer must prove them to be true. In this instance the burden of proof is on the dealer. This comprehensive list must be affixed to the purchase contract which must have on it the dealer and salesperson's license number, the price, date, name and address of the purchaser and dealer,

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the price of the car and the specifications of the warranty.

The warranty does not cover negligence on the part of the purchaser. For example, if a motorist leaves his/her lights on and runs down the battery, the dealer cannot be responsible for repairing the battery. Further, the warranty does not cover normal maintenance, upholstery, abuse, accessories or any acts of negligence.

We feel that it is only fair to allow dealers to sell used cars without warranties provided, again, the consumer is given all the information possible about the car. For example, the dealer should be required to affix to the automobile an estimate of its cost of making the car road-worthy and safe. The dealer must guarantee the repairs could be done within 10% of the estimated cost. Under those circumstances the automobile may be sold without a warranty.

In the course of our deliberations we became sensitive to the activity of the so-called 'curb-siders'. This is a colloquial term used by legitimate used car dealers to describe those who sell automobiles from their driveways posing as individual citizens but who are in effect car dealers or quasi car dealers. We suggest that any person who acts as an intermediary between people in the sale or purchase of

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an automobile and receives money for doing same, should be viewed as a dealer. Further, we would recommend to the Province of Ontario that the appropriate authorities step up their policing of private sales and try to distinguish between legitimate private sales and quasi dealer sales. Perhaps a limit should be put on the number of automobiles a private citizen may sell during the course of a year. For example, if someone sells over 4 cars a year perhaps he/she should be classed as a dealer and subject to the appropriate regulations.

The committee has several final concerns with regard to used car sales. First, we are told that on occasion some used car dealerships have arrangements with nearby garages where great numbers of automobiles are given safety inspections. Therefore consumers may have reason to doubt the accuracy of that safety inspection. If a potential purchaser can cite some reason for doubting the safety certificate, he/she should be allowed to go to another garage to have the car certified at the expense of the dealer if that car is proven to be unsafe.

Further, we feel that the purchaser should be entitled to cancel the used car purchase agreement within 48 hours of delivery of the automobile if a defect is found which substantially impairs the automobile's use, safety and/or value and was not indicated at the time of purchase.

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AUTOMOTIVE REPAIRS

The Auto Watchdog Committee is very impressed with the legislation in other jurisdictions which protects consumers from being ripped off when they have their cars repaired. We, therefore, are recommending a system of written estimates to ensure that both consumer and mechanic both know what they are agreeing to beforehand.

We recommend that a written estimate and subsequent telephone authorization be required when every repair is done. Repair shops should not be allowed to charge for this estimate unless the consumer is informed in advance of such a charge. An estimate or documentation may not be required if a minor repair were done for free. If for any reason a consumer does not wish a written estimate, that consumer must waive the right to an estimate in his or her own handwriting. If the mechanic would have to take the automobile apart to give an estimate, the estimate must include the cost of reassembly, if the consumer decides he or she does not want the work done.

The estimate must include detailed information, including the name and address of the motorist. The repairer's name must appear on the estimate, as must the make, model, year and registration number of the car. It should include type and price of repairs, the type of parts to be installed and whether they are new, used, retooled or reconditioned, and the date of the estimate and length of time it applies.

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No additional charges may be made to the consumer after the written estimate is made. The mechanic must get authorization for any further repairs. If this authorization cannot be obtained in written form, it may be obtained over the telephone, but the mechanic must record the phone number and the time of the call which gave him such authorization, in order to avoid the so-called five o'clock surprise. Repair shops may not keep a consumer's automobile if the consumer pays the estimated amount that he or she authorized.

The Committee further feels repair shops must post signs informing consumers of their rights. The information on these signs should include but not be limited to, information about: hourly rates, written estimates, the return of parts, itemized final bills, clearly written forms, final bills not to exceed the authorized estimate of repair costs etc.. The sign must further notify consumers if mechanics or other employees are on commission, bonus or other incentive for parts or service sold. When the work is completed the final bill must have all information in clear and legible writing or typing. The bill must contain the name and address of the motorist and repairer, the make and model and year and registration number of the car, the date of repair and the number of miles and/or kilometres, the repairs done, the parts installed, specifying whether they are new, used, retooled or reconditioned, the number of hours for labour, the hourly rate and total cost, the total amount of labour and parts charged, the characteristics of any warranty, expressed in plain language, and an itemized list of any charges for shop supplies. If any of the work was sub-contracted to another repair shop, the original repairer that the consumer dealt with is responsible for the parts and/or labour.

Upon delivery of the automobile and presentation of the bill the repairer must offer any replaced parts to the consumer, except if the parts are needed for exchange or retooling or when repairs are done for free, or where the part is subject to warranty and must be returned to the manufacturer or distributor. Further, if the consumer does not take the old parts, the repairer must keep them for 48 hours in the event the consumer subsequently requests them. All parts must be fit for the purpose intended and be reasonably durable as per the Sales of Goods Act.

GHOST CAR

This undercover method of determining if garages are performing the proper repairs at a reasonable price has proven to be extremely effective in several jurisdictions. In New York State alone, during 1980/81, 27.9% of registered auto repair

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shops which were investigated had their registrations suspended or revoked for poor, needless, or fraudulent auto repairs and maintenance. The California 'Ghost Car programme' uncovered illegal activities in 60% of its cases.

A San Francisco District Attorney says that in one three month period, 335 out of 540 customers were charged for more time, based on a flat rate manual than the mechanic actually worked. In a Wisconsin survey, 33,267 hours of body work was performed, but customers had to pay for 45,631 hours. This is almost 50% more time billed than worked.

To our knowledge, no such figures are available in Canada. However, in his submission to our committee, David Mitchell of the Ministry of Consumer and Commercial Relations, indicated the dramatic success of Ontario's Ghost Car program. He cited the laying of over 2200 criminal charges since the inception of the program in 1979. Unfortunately Ontario's Ghost Cars normally only operate between April and September.

In light of the dramatic statistics available to this committee from New York, California, and Ontario, we must stress our desire to see a stepped up ghost car program in Metropolitan Toronto. We are impressed with the work of the Auto Squad in the Province of Ontario in this regard, but would ask that there be a minimum of one ghost car in operation at any given time in the Metropolitan Toronto area, for the full twelve months of the year.

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To the best of our knowledge, funding for the staff and services of the Auto Squad seems to be comprised of $100,000 from Metro and $250,000 from the Province. This is a provincial responsibility and we feel the province should provide greater funding to increase this valuable deterrent, especially considering that Metro's contribution seems to be disproportionate to that of other municipalities. We feel that now may be an excellent time for the Province of Ontario and Metro to take the initiative in the expansion of the use of ghost cars.

There may be an opportunity for the Licensing Commission to assist. The General Manager of the Commission indicates that the board room could be made available regularly for arbitration and other hearings. Further, the General Manager could arrange to coordinate the allocation of space in other municipalities within the Metro federation so that the public would be able to request arbitration and other hearings in the Municipalities in which they live. There should be no charge for the use of municipal space in area municipalities.

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THE APPOINTMENT OF THE AUTO WATCHDOG

Finally, but most importantly, this Committee is recommending the appointment of The Auto Watchdog. This public official must have a strong background in automobile mechanics, and would deal with the problems of consumers who live in Metro Toronto only. He or she would fall under the jurisdiction of the Province. The Watchdog's duties would include, but not be limited to:

1) co-operating with the Provincial/Metro Ghost Car Program which would be expanded;

2) scheduling arbitration/mediation meetings;

3) authorizing the remuneration of arbitrators;

4) overseeing the clerical employee who ensures the arbitration programs run smoothly;

5) compiling statistics on the arbitration and ghost car programs so that consumers and businesses may be

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informed about these activities;

6) informing the public of their rights and remedies available when purchasing new and used cars and having their cars repaired;

7) publishing weekly statistics on the results of ghost car activities;

8) ensuring that automobile dealers and garages inform consumers of their rights;

9) screening, advising and making recommendations to arbitration board as to whether a case falls under their jurisdiction and should be heard. The deciding criteria would apply for one year or 12,000 miles whichever comes first. The manufacturer/dealer would have four chances to fix the same fault or 30 accumulative days whichever comes first. If a car is deemed a lemon under this criteria the arbitration board would have the option of awarding the consumer a new car or his/her money back less an allowance for use, as per the formula on page 16. The board should also be empowered to award collateral costs such as tax, licence, dealer preparation, and so on. The car can only be deemed a lemon if its use, value, and/or safety is diminished;

10. encouraging and fostering increased public awareness of the auto sales and repair fields through whatever means at his/her disposal, including public educational institutions, the media, and other avenues;

RECOMMENDATIONS

In Summary the Committee recommends that Metro seek the necessary legislation to implement:

1. Amending by-law No. 107-78 to expand Metro's regulatory powers with regard to auto repair shops, as per pages 12 and 13
2. A 3-year pilot arbitration/mediation program for Metro for buyers of new and used cars. The individual consumer would have to pay a $50.00 application fee and the manufacturer would have to pay a $250.00 application fee in the case of new cars. In the case of used cars when the purchase price is in excess of $3,000, the consumer would pay a $50.00 application fee and the dealer would pay a $160.00 application fee. These funds would go to the operation of the arbitration board. Board members would receive a fee of $100.00 each for sitting to arbitrate a new car dispute and $70.00 each for arbitrating a used car dispute. The fees should be reviewed in 6 months.
3. The passing of a Lemon Law if the foregoing pilot project does not succeed.
4. Dealers/manufacturers/repair shops to provide complete information to consumers on all aspects of their rights and the remedies available to them.
5. Extending new car warranties one day for every day that the car is in the shop.
6. The compilation and dissemination of records and statistics on consumer complaints and their resolution.
7. The keeping of detailed records and work orders for every time a car is in a shop.
8. Warranties, work orders and other records be written in plain understandable language.

9. If a dealer does not repair a car during the warranty period the consumer may have the car repaired elsewhere and get the money back from the dealer if it is proven the consumer had been charged for a problem that had not been fixed.

10. Any ambiguous statements in car purchase contracts should be interpreted in the consumers' favour.

11. Dealers be responsible for subcontracted options.

12. Courtesy cars be provided to consumers if the dealer can't obtain replacement parts within a reasonable period of time.

13. A used car warranty for all ages and 'classes' of cars.

14. Affixing labels on used cars giving consumers complete information about the automobile.

15. A crack down on quasi-car dealers who pose as private citizens.

16. Requiring that used car dealers pay for the verification of safety certificates if they are found to be inaccurate.

17. Consumers be allowed to cancel the purchase of a used car within 48 hours if a defect is found which substantially impairs the car's use safety and/or value.

18. Mandatory written estimates and final bills at repair shops contain detailed information about the transaction.

19. Final repair charges may not exceed the amount authorized by the consumer.

20. Repair shops not be allowed to keep consumer's car if the consumer pays the amount he or she authorized.

21. Repair shops may not keep cars if repair costs exceed the amount authorized, and may not put a lien on the car if the consumer pays the amount he or she authorized.

22. Repair shops be required to post signs informing consumers of their rights.

23. Consumers must be notified if mechanics or other employees are on commission, bonus or other incentive for parts and labour sold.

24. Garages be responsible for any sub-contracted work.

25. Consumers be offered their replaced parts.

26. Garages must keep replaced parts for 48 hours in case consumers subsequently request same.

27. The use of one ghost car in Metropolitan Toronto at all times for the full twelve months of the year.

28. The province increase funding for the ghost car program.

29. The appointment of The Auto Watchdog.

APPENDIX 1

MEETING No. 1 - DECEMBER 7, 1983

GOVERNMENT AND CONSUMER OBSERVERS

LIST OF PERSONS WHO MADE AN ORAL SUBMISSION

COPIES OF WRITTEN SUBMISSIONS

MEETING No. 1 - DECEMBER 7, 1983

The following persons made an oral submission to the Committee:

Mr. Jeffrey D. Gray, Barrister and Solicitor,
Automobile Protection Association, Ontario

Mr. George Iny, Legal Consultant,
Automobile Protection Association, Montreal

Mr. David Mitchell, Director,
Investigations and Enforcement Branch,
Business Practices Division,
Ministry of Consumer and Commercial Relations,
Province of Ontario

Mr. W. Keen, Director,
Compliance Branch,
Ministry of Transportation and Communications,
Province of Ontario

Staff Inspector John Getty,
Auto Squad,
Metropolitan Toronto Police

State of Connecticut
HOUSE OF REPRESENTATIVES
STATE CAPITOL
HARTFORD, CONN. 06106

REPRESENTATIVE JOHN J. WOODCOCK
ASSISTANT MAJORITY LEADER
FOURTEENTH DISTRICT

97 MURIELLE DRIVE
P.O. BOX 684
SOUTH WINDSOR, CONNECTICUT 06074

MEMBER
GENERAL LAW COMMITTEE
STATE CAPITOL TELEPHONE
566-8700

PRESS CONFERENCE -- STATE CAPITOL -- OCTOBER 5, 1983

Last Saturday marked the first birthday of our Connecticut "Lemon Law," and I have called this press conference to look back, look ahead and to look within as to how things have gone in our first year. Since we passed our law in April, 1982, we, in Connecticut, have been in the proverbial fishbowl.

Being first in an area so close to the public's heart, we have been swamped with inquiries from other states. The response in the wake of our pioneering efforts is that 17 states have adopted statutes modeled on our law, while some 20 others are now considering similar legislation with more to come in 1984.

The "Lemon Law" has been introduced in the Congress and is virtually verbatim our Connecticut law. It is presently pending in committee. I have attached a copy to my statement.

Those states following in our footsteps have, in several instances, attempted to answer in a variety of ways some of the questions arising from the Connecticut experience, such as "What should be done with a 'lemon' that has been returned?" "Should there be a stricter definition of what constitutes a 'lemon'?" "Should new cars be protected beyond the present warranty coverage prescribed in our law as one year or 12,000 miles?" "Should protection cover implied as well as express warranties?" "Are we missing some essential manufacturer and/or dealer obligations in areas such as notification procedures and maintenance of repair facilities?" "What constitutes 'collateral charges' and 'reasonable allowance for use' when a refund is given?" "Is there a need to devise a more effective informal dispute settlement mechanism to arbitrate 'Lemon Law' disputes outside of going to court?" and "Do we need more effective enforcement and oversight of the law?" Also attached to my statement is a recent survey from the office of Legislative Research which highlights other states' laws and indicates how they differ from ours.

How have things gone in Connecticut since the "Lemon Law" became a reality? On balance, I would say it has been a dramatic success. When the law went into effect last year, some were skeptical and many were critical. I personally was somewhat apprehensive. The skeptics included media, business associations, and attorneys who all thought the law more cosmetic than substantive. The critics in our state were primarily our car dealers and the manufacturers. I think it fair to say that the car dealers in Connecticut like their colleagues in other states have turned around on the "Lemon Law" and now see it as a positive force. There remain some dissenters but most see it as a law that makes them more effective, by its putting more pressure on the manufacturer, by its making customers more confident in their product and by its removing them as the manufacturer's local buffer.

My personal apprehension is based on my then and present reliance on voluntary, free, expeditious and neutral third-party arbitration which is the heart of the "Lemon Law." That arbitration process which is incorporated in our law, the other 17 states, and the Federal proposal, is designed to create a neutral arena with adequate protections for all parties so as to see that disputes are refereed promptly, objectively, and impartially. I had envisioned that the "Lemon Law" standards would be considered by the arbitrators and in many instances they are.

My bet was that the auto makers would adopt arbitration programs so as to recoup their good name, so as to rekindle their competitiveness in the market place again, and most of all, show their good faith by meeting the spirit of the law. I suppose what I was looking for was a rebirth of the traditional entreprenurial spirit--a demonstration by the manufacturers that they were really sincere in being competitive by pleasing their customers through building a better product which they would stand behind. That rather idealistic goal has been met to a considerable degree. While many manufacturers have chosen not to voluntarily comply with the "Lemon Law," two of the American "Big Three" have. One of them, the Chrysler Corporation, was on the verge of bankruptcy not long ago. Today, they atribute much of their resurgence to their Customer Satisfaction Boards, which are in concept and practice, that which was envisioned by the "Lemon Laws." As of July 1, 1983, Ford Motor Company initiated a "Lemon Law" arbitration program nationwide. Hopefully, peer pressure, the market place and the adoption of this law in virtually all of our states, will compel the other manufacturers to take similar positive action.

As I expected, "Lemon Law" complaints began to surface in late February and early March, Since that date, my office has logged more than 280 individual telephone requests for help from Connecticut consumers. We had to hire extra help and put in an additional telephone line. During the same time frame, we have received over 200 letters from other consumers looking for help, guidance and direction. The same phenomenon has taken place within the Department of Consumer Protection, the Attorney General's office and the Motor Vehicle Department. The magnitude of the problem never ceases to amaze me; and I am reminded of iteveryday by my telephone and mail.

Many media people have focused in on the number of cars replaced or the number of refunds given. That is a helpful index, but hardly one to measure the true impact of the "Lemon Law." I think that that impact is best measured by the auto industry's new sensitivity and increased awareness of its responsibility to the public. We still have a long way to go and this is not the best of all possible worlds for the new car consumer. But the advent of arbitration programs, the new emphasis on factory backup and assistance as expressed by our Connecticut car dealers, and the public's awareness of the "Lemon Law" standards have led to at least 40 buy-backs or refunds for Connecticut new car buyers. This is especially significant when you consider that General Motors replaced nationally only 267 cars between 1978 and now.

Like anything else that is new, we have had some growing pains. In 1984, I intend to return to the Legislature with an omnibus "Lemon Law" bill which will address our Connecticut experiences, incorporate some good things other states have done, and reflect the input of our State government officials, car dealers, manufacturers, and consumers. We have been the leaders and the pioneers and come next April, I am confident we will add to that national reputation.

State of Connecticut
HOUSE OF REPRESENTATIVES
STATE CAPITOL
HARTFORD, CONN. 06106

REPRESENTATIVE JOHN J. WOODCOCK
ASSISTANT MAJORITY LEADER
FOURTEENTH DISTRICT

97 MURIELLE DRIVE
P.O. BOX 684
SOUTH WINDSOR, CONNECTICUT 06074

MEMBER
GENERAL LAW COMMITTEE
STATE CAPITOL TELEPHONE
566-6700

STATEMENT OF REPRESENTATIVE JOHN J. WOODCOCK BEFORE THE SENATE CONSUMER PROTECTION AND PROFESSIONAL LICENSURE COMMITTEE

HARRISBURG, PENNSYLVANIA AUGUST 3, 1983

I AM MOST PLEASED TO BE WITH YOU THIS MORNING, TO DISCUSS THIS PROPOSED LEGISLATION, ITS ORIGIN, ITS WORKINGS AND ITS REASON FOR BEING.

OVER TWO YEARS AGO, I BEGAN WORKING ON WHAT IS NOW KNOWN AS THE CONNECTICUT LEMON LAW. IT WAS AN IDEA THAT WAS SPAWNED BY MY CONCERN THAT CONNECTICUT'S THEN LAW DID NOT AFFORD ADEQUATE LEGAL PROTECTION TO CONSUMERS WHO FOUND THEMSELVES WITH NEW CARS THAT DEFIED REPAIR. I HAD NEVER PERSONALLY OWNED A LEMON, BUT I KNEW PEOPLE WHO HAD--PEOPLE WHO HAD INVESTED GOOD MONEY ONLY TO FIND THEMSELVES SUDDENLY IMMERSED IN THE "WEAR DOWN PROCESS" WHICH ULTIMATELY RESULTED IN THEM THROWING IN THE TOWEL AFTER ABSORBING A FINANCIAL AND EMOTIONAL BEATING.

WE IN CONNECTICUT MADE CONSUMER LAW HISTORY ON JUNE 4, 1982 WHEN GOVERNOR WILLIAM O'NEILL SIGNED INTO LAW THE NATION'S FIRST LEMON LAW. IT IS A REVOLUTIONARY MEASURE WHICH CHANGES THE BALANCE OF POWER, THE LEGAL BURDENS AND THE ECONOMICS OF THE COMPLEX

CONSUMER-DEALER-MANUFACTURER RELATIONSHIP.

THE CONNECTICUT LEMON LAW HAS SENT SHOCK WAVES THROUGH THE AUTOMOBILE INDUSTRY FROM THE CORPORATE SKYSCRAPER DOWN TO THE ASSEMBLY LINE, TO THE AREA DEALERS. IT HAS GENERATED AN INTERNATIONAL DEBATE, DEALING WITH SUCH QUESTIONS AS "IS THIS LAW NECESSARY?" "WHAT HAPPENED IN THE INDUSTRY TO CAUSE SUCH AN EROSION IN CONSUMER CONFIDENCE?" AND "DO THE INDIVIDUAL STATES HAVE ADEQUATE AND EFFECTIVE REMEDIES AVAILABLE TO NEW CAR CONSUMERS WHO ARE FACED WITH HAVING A SUBSTANTIAL INVESTMENT TURN SOUR?"

IN JANUARY, 1982, I INTRODUCED THE LEMON LAW TO THE CONNECTICUT GENERAL ASSEMBLY. I DID SO WITH THE SOLE INTENTION OF CREATING A DIALOGUE AS TO WHETHER WE IN CONNECTICUT WERE PROVIDING ADEQUATE LEGAL PROTECTION TO OUR NEW CAR CONSUMER. I WAS CONVINCED AFTER EXTENSIVE RESEARCH, THAT WHAT WAS NEEDED WAS A LAW, A STANDARD, OR A PROGRAM, WHICH GAVE CONSUMERS AN EFFECTIVE, REASONALBE AND MEANINGFUL REMEDY WHICH WOULD BALANCE THE EQUITIES, WHICH WOULD REQUIRE THE PARTIES TO WORK TOGETHER, SO AS TO RESOLVE THE PROBLEMS AND ISSUES AS EXPEDITIOUSLY AS POSSIBLE.

UPON FILING THE LEGISLATION, I WAS MET WITH PREDICTABLE REACTION. THE PRESS FOUND IT AMUSING, THE LEGISLATIVE LEADERSHIP THOUGHT IS WAS ONE MORE IDEALISTIC FRESHMAN PROPOSAL, AND THE INDUSTRY SNICKERED: HOWEVER, THE CAR BUYING PUBLIC REACTED STRONGLY. I WAS DELUGED WITH LETTERS AND TELEPHONE CALLS FROM PEOPLE AROUND THE STATE. OVERWHELMING PUBLIC INTEREST AND OFFERS OF HELP ILLUSTRATED THAT THIS WAS A LARGER ISSUE THAN A MERE DISCUSSION OF AFFORDING OUR NEW CAR BUYERS ADEQUATE LEGAL PROTECTION. IT WAS OBVIOUS THAT MANY PEOPLE HAD BEEN, AND WERE BEING, SUBJECTED TO THE "LEMON CAR SYNDROME", AND THAT THEY WERE MOST ANXIOUS TO SEE LEGISLATION ENACTED TO ADDRESS IT.

IN THE FOLLOWING WEEKS, I RECEIVED COUNTLESS DETAILED CASE HISTORIES FROM LEMON OWNERS. MANY CONSUMERS TOOK A DAY OFF FROM WORK AND TESTIFIED AT THE LEGISLATIVE PUBLIC HEARING, SHOCKING THE COMMITTEE MEMBERS WITH DETAILS OF THEIR PERSONAL "HORROR STORIES". THE AUTO INDUSTRY VIGOROUSLY PRESENTED ITS SIDE OF THE ISSUE. INTENSIVE LOBBYING, THEREAFTER, BECAME THE ORDER OF THE DAY IN THE CONNECTICUT GENERAL ASSEMBLY. BUT TWO MONTHS LATER, ON APRIL 30, 1983, FINAL LEGISLATIVE APPROVAL WAS WON IN THE HOUSE OF REPRESENTATIVES AND THIS HISTORIC BILL WAS SENT TO THE GOVERNOR FOR HIS REVIEW AND SIGNATURE.

AS MENTIONED EARLIER, THE CONNECTICUT LEMON LAW IS A REVOLUTIONARY PIECE OF LEGISLATION THAT CONTAINS PRECEDENT SETTING LEGAL THEORIES THAT COMPLETELY CHANGED THE CONSUMER-DEALER-MANUFACTURER LEGAL RELATIONSHIP. IT SIGNIFICANTLY STRENGTHENS THE NEW CAR BUYER'S RIGHTS WHEN HE FINDS HIMSELF WITH A "LEMON" INAT LEAST FOUR DISTINCT WAYS.

1. DIRECT LEGAL RECOURSE: THE LAW GIVES CONSUMERS DIRECT LEGAL RECOURSE AGAINST THE MANUFACTURER. IT REQUIRES THAT A MANUFACTURER OF A NEW PASSENGER CAR, VAN OR TRUCK, OR THE MANUFACTURER'S AGENT OR AUTHORIZED DEALER, REPAIR ALL DEFECTS COVERED BY A WRITTEN WARRANTY DURING THE WARRANTY PERIOD OR WITHIN ONE YEAR OF THE VEHICLE'S DELIVERY DATE, WHICHEVER OCCURS FIRST. IF THE MANUFACTURER OR ITS AGENT ARE UNABLE TO REPAIR DEFECTS WHICH SUBSTANTIALLY IMPAIR THE USE OR VALUE OF THE VEHICLE, AFTER A REASONALBE NUMBER OF REPAIR ATTEMPTS, THE MANUFACTURER IS THEN REQUIRED TO EITHER REPLACE THE VEHICLE OR REFUND THE FULL PURCHASE PRICE, INCLUDING COLLATERAL CHARGES, LESS A REASONABLE ALLOWANCE FOR THE CONSUMER'S USE.

2. LEMON DEFINED: THE LAW DEFINES A "LEMON" VEHICLE BY SPECIFYING THAT "A REASONABLE NUMBER OF ATTEMPTS" HAVE BEEN UNDERTAKEN WHEN (1) THE SAME SUBSTANTIAL PROBLEM HAS BEEN SERVICED OR REPAIRED FOR 4 OR MORE TIMES DURING THE WARRANTY PERIOD OR WITHIN ONE YEAR OF THE VEHICLE'S DELIVERY DATE, WHICHEVER IS EARLIER, OR (2) THE VEHICLE HAS BEEN OUT OF SERVICE FOR A CUMULATIVE TOTAL OF 30 CALENDAR DAYS FOR THE SAME PERIOD.

THIS IS THE FIRST TIME THAT ANY LEGISLATION, STATE OR FEDERAL, HAS SET A STANDARD FOR THE TERM "LEMON". IF THE CONSUMER MEETS ONE OF THE TWO TESTS, THEN HE HAS A PRIMA FACIE CASE UNDER THE LAW AND HE WILL NO LONGER HAVE TO BRING HIS LEMON BACK TIME AND TIME AGAIN FOR REPAIR EFFORTS.

THE "FOUR OR MORE STANDARD" APPLIES TO A SPECIFIC MAJOR PROBLEM WHICH IS OFTEN THE CASE WITH A LEMON; HOWEVER, SOME "LEMONS" HAVE A MYRIAD OF RESOLVABLE PROBLEMS WHICH ARE CUMULATIVE, AND IF THAT IS THE CASE, THE SECOND, "30 DAY STANDARD" BECOMES OPERATIVE.

3. BURDEN OF PROOF SHIFTED: IF THE CONSUMER MEETS EITHER TEST, A LEGAL PRESUMPTION IS CREATED AND THE BURDEN OF PROOF IS THEN SHIFTED TO THE MANUFACTURER TO SHOW THE CAR IS NOT A "LEMON". THIS IS OBVIOUSLY A DIRECT CONTRAST TO THE UNIFORM COMMERCIAL CODE THEORY IN WHICH THE BURDEN OF PROOF IS ON THE CONSUMER. IT IS ALSO HELPFUL TO THE CONSUMER TO KNOW WHAT STANDARDS HE MUST MEET, UNLIKE THE SUBJECTIVE STANDARDS OF THE UNIFORM COMMERCIAL CODE. UNDERSTANDABLY, THE INDUSTRY HAS CRITICIZED THESE STANDARDS AS BEING TOO RIGID. CONSUMERS ARGUE OTHERWISE, KNOWING NOW WHAT THEY MUST DO TO MEET THEIR LEGAL BURDENS.

4. ARBITRATION: THE FOURTH REVOLUTIONARY COMPONENT OF CONNECTICUT'S LEMON LAW IS THE ARBITRATION PROVISION WHICH SIGNIFICANTLY STRENGTHENS THE CONSUMER'S LEGAL HAND.

THE LAW PROVIDES THAT IF A MANUFACTURER HAS ESTABLISHED AN INFORMAL DISPUTE MECHANISM (I.E. NON BINDING ARBITRATION), WHICH COMPLIES IN ALL RESPECTS WITH TITLE XVI CODE OF FEDERAL REGULATIONS PART 703, THEN IN THAT EVENT, THE CONSUMER MUST THEN FIRST RESORT TO THAT PROCEDURE BEFORE SEEKING FURTHER RELIEF UNDER THE LAW. SECTION 703 WAS ENACTED BY THE FEDERAL TRADE COMMISSION UNDER THE AUTHORITY OF THE MAGNUSON-MOSS WARRANTY ACT, 15 USC 2309 AND 2310, A FEDERAL LAW WHICH CONCERNS CONSUMER PRODUCTS AND WARRANTIES AS TO SAME. THESE REGULATIONS AND THE CRITERIA CONTAINED THEREIN ARE, IN MY JUDGMENT, VERY CONSUMER ORIENTED AND LEND THEMSELVES WELL TO THE GOAL OF THE CONSUMER, WHICH IS TO RESOLVE THE PROBLEM AS EXPEDITIOUSLY AS POSSIBLE. THE CONNECTICUT LEMON LAW IS THE FIRST STATE LAW TO INCORPORATE THE MAGNUSON-MOSS CRITERIA.

VERY BRIEFLY, THE HIGHLIGHTS OF THE 703 REGULATIONS ARE: (1) THEY ESTABLISH REQUIREMENTS FOR CONSUMER NOTIFICATION CONCERNING THE AVAILABILITY OF THE ARBITRATION PROGRAM. NOTICE MUST BE IN THE OWNER'S MANUAL, ALL LITERATURE AND BROCHURES CONCERNING THE PRODUCT, THE VEHICLE WARRANTY, AND ON SIGNS AT THE CAR DEALERS. INFORMATION THAT MUST BE WRITTEN IN THE WARRANTY INCLUDES THE NAME OF THE ARBITRATION MECHANISM, ITS ADDRESS AND TELEPHONE NUMBER. IN ADDITION, THE CONSUMER MUST RECEIVE NOTICE OF THE ABOVE AT THE TIME OF SALE, AS WELL AS WHENEVER A DISPUTE ARISES. (2) THE ARBITRATION MECHANISM MUST BE INSULATED FROM THE MANUFACTURER'S INFLUENCE, AND THE DECISON-MAKERS MUST NOT BE ASSOCIATED IN ANY WAY WITH A PARTY

TO THE DISPUTES. (3) THE ARBITRATION PROGRAM MUST BE FREE TO THE CONSUMERS. (4) THE DISPUTE MUST GENERALLY BE SETTLED WITHIN FORTY (40) DAYS. (5) THE ARBITRATION IS NON BINDING ON THE CONSUMER WHILE THE MANUFACTURER IS REQUIRED TO PERFORM OBLIGATIONS IN GOOD FAITH. (6) THE ARBITRATION MECHANISM MUST WHEN RENDERING A DECISION, INFORM THE CONSUMER THAT FURTHER LEGAL REMEDIES, SUCH AS A LAWSUIT ARE AVAILABLE AND THAT THE AWARD IS ADMISSIBLE AS EVIDENCE IN COURT.

THE INCLUSION OF THE ARBITRATION PROVISION IN THE "LEMON LAW" HAS GIVEN THE AUTOMOBILE INDUSTRY AN INCENTIVE TO IMPLEMENT THESE PROGRAMS. IN CONNECTICUT, THE RESPONSE HAS BEEN MOSTLY POSITIVE. CHRYSLER AND FORD HAVE INITIATED PROGRAMS WHICH COMPLY WITH RULE 703 AND THE PUBLIC POLICY AS EXPERIENCED BY OUR LEGISLATURE. GENERAL MOTORS, NISSAN, VOLKSWAGEN,PORSCHE AND AUDI HAVE CHOSEN NOT TO IMPLEMENT AN ARBITRATION PROGRAM WHICH COMPLIES WITH THE "LEMON LAW".

GENERALLY SPEAKING, FROM THE CONSUMER'S PERSPECTIVE, THE ARBITRATION PROGRAM SHOULD BE THE STRONGEST FACET OF THE LAW. THE NON-BINDING ASPECT MAINTAINS THE PRESSURE ON THE MANUFACTURER; AND AFFORDS EXPEDITIOUS AND INEXPENSIVE RELIEF TO CONSUMERS WHO ARE ALREADY FINANCIALLY PRESSED BY AN INVESTMENT TURNED SOUR. FURTHERMORE, THE ARBITRATION BOARDS WILL THEORETICALLY USE THE LAW'S STANDARD IN DETERMINING THEIR AWARDS. IT IS IN EVERYONE'S INTEREST TO RESOLVE THE PROBLEM IN AS SHORT A TIME FRAME AS POSSIBLE; AND I EXPECT 90% OF THESE CASES SHOULD SETTLE AT THE ARBITRATION LEVEL.

LEMON VEHICLES ARE NOT UNIQUE TO CONNECTICUT. THE FEDERAL TRADE COMMISSION RECENTLY REPORTED THAT CONSUMER COMPLAINTS ABOUT AUTOMOBILE DEALERS AND CARS JUMPED FROM FIFTH (5th) TO FIRST (1st)

PLACE IN 1981. THE PROBLEMS WITH THE PURCHASE AND REPAIR OF AUTOMOBILES REPRESENT THE NUMBER ONE COMPLAINT ACROSS THE COUNTRY ACCORDING TO THE WHITE HOUSE OFFICE OF CONSUMER AFFAIRS, THE LEW HARRIS POLL AND THE UNITED STATES COUNCIL OF BETTER BUSINESS BUREAUS.

TO SAY THAT CONNECTICUT'S "LEMON LAW" HAS ATTRACTED THE ATTENTION OF OTHER STATES IS AN UNDERSTATEMENT. TO DATE, FOURTEEN STATES HAVE FOLLOWED OUR EXAMPLE AND THREE OTHER SIMILAR PROPOSALS ARE AWAITING GUBERNATORIAL ACTION. IN ADDITION, SOME TWENTY OTHERS ARE PRESENTLY CONSIDERING "LEMON" MEAUSRES, WITH MORE TO COME IN 1984. THE LEGISLATURE OF GUAM IS ALSO INTERESTED IN CONNECTICUT'S "LEMON LAW" EXPERIENCE. IN CANADA, A "LEMON LAW" HAS BEEN FILED IN THE ONTARIO PARLIAMENT AND IS BEING LOOKED AT AS A POSSIBLE NATION-WIDE MEASURE AND THE CONCEPT IS EVEN BEING DISCUSSED CURRENTLY IN OUR CONGRESS. STATES THAT HAVE THE "LEMON LAW" INCLUDE NEW YORK, NEW JERSEY, FLORIDA, CALIFORNIA, MINNESOTA, MAINE, MONTANA, NEBRASKA, NEVADA, NEW HAMPSHIRE, TEXAS, WASHINGTON AND WYOMING. MASSACHUSETTS, WISCONSIN AND OREGON ARE ABOUT TO HAVE "LEMON LAWS".

CONNECTICUT, BECAUSE IT WAS FIRST, CONTINUES TO BE THE CENTER OF SCRUTINY. INQUIRIES ARE STREAMING IN, SEEKING TO DETERMINE WHETHER AND HOW THE LAW IS, OR IS NOT WORKING. IN THE NINE MONTHS SINCE ITS ENACTMENT, CASES HAVE BEEN FILED BOTH IN THE COURTS AND AT THE ARBITRATION LEVEL. IT IS ESTIMATED THAT AT LEAST TWENTY CARS HAVE BEEN REPLACED SINCE OCTOBER 1, 1982, AND THAT IS ONLY THE TIP OF THE ICEBERG. THE TRUE MEASURE OF THE LAW'S SUCCESS LIES MORE IN THE AUTOMOBILE INDUSTRY'S HEIGHTENED AWARENESS OF WHAT IS MUST DO TO REGAIN AND RETAIN CONSUMER CONFIDENCE IN ITS PRODUCTS, AND TO SEE THAT CUSTOMERS GET FAIR AND SWIFT SOLUTIONS WHEN THEY ENCOUNTER NEW CAR PROBLEMS.

EVEN THOUGH IT POTENTIALLY BENEFITS AUTOMAKERS IN THE MARKETPLACE AND ENHANCES THEIR COMPETITIVE POSITION, THAT DOES NOT MEAN THE MANUFACTURERS ARE ISSUING RINGING ENDORSEMENT OF THE "LEMON LAW". TOO MANY CONTINUE TO OPPOSE OR UNDERMINE IT AT EVERY TURN, FREQUENTLY AIDED BY GROUPS SUCH AS THE BETTER BUSINESS BUREAU AND THE AMERICAN AUTOMOBILE ASSOCIATION. HOWEVER, DEALER ORGANIZATIONS FROM STATES SUCH AS MAINE, MASSACHUSETTS AND NEW JERSEY HAVE PUBLICLY ENDORSED THE LAW BECAUSE IT PUTS THE BURDEN OF RESPONSIBILITY FOR A "LEMON" WHERE IT BELONGS--ON THE MANUFACTURER. AS PROOF, OUR CAR DEALERS HERE IN CONNECTICUT REPORT NEW INTEREST AND MORE ASSISTANCE FROM THEIR MANUFACTURERS IN WORKING OUT NEW CAR WARRANTY PROBLEMS.

THE CONNECTICUT LEMON LAW IS SYMPTOMATIC OF A GREATER NATIONAL PROBLEM, THAT IS, A TROUBLED INDUSTRY AND A WARY PUBLIC. IT IS DESIGNED TO MAKE THE INDUSTRY MORE RESPONSIVE AND ACCOUNTABLE TO THE NEW CAR CONSUMER AND ITS LONG TERM EFFECT WILL BE TO CREATE AN ATTITUDINAL CHANGE IN THE INDUSTRY. IT IS A LEGISLATIVE STATEMENT TO THE INDUSTRY THAT IT SHOULD IMPROVE ITS QUALITY CONTROL AND WARRANTY SERVICE AND THUS STAND FIRMLY BEHIND ITS PRODUCTS.

SINCE THE PROBLEM OF THE PURCHASE AND REPAIR OF AUTOMOBILES IS THE NUMBER ONE CONSUMER PROBLEM IT IS TIME FOR US TO LOOK AT OUR LAWS AND ACKNOWLEDGE THAT THEY ARE NOT WORKING AS ORIGINALLY INTENDED. IT IS TIME FOR US TO LESSEN THE LEGAL BURDENS THAT EXIST FOR THE CONSUMER.

THE LEMON LAW STRENGTHENS THE POSITION OF A NEW CAR BUYER WHO IS FORCED TO PLAY THE "WEAR DOWN GAME" WHEN THE MANUFACTURER OR AGENT REFUSES TO ACKNOWLEDGE DEFECTS OR REQUESTS ENDLESS OPPORTUNITIES TO FIX THEM.

I BELIEVE THAT THIS LAW WILL HELP TO RESTORE THE CONFIDENCE OF THE AMERICAN WORKING PUBLIC IN OUR AUTOMOBILE INDUSTRY; AND THUS AID THE INDUSTRY TO REGAIN ITS FORMER STATURE. IT SHOULD PROVIDE IMPETUS TO THE AUTOMOBILE MANUFACTURER'S QUALITY CONTROL AND TO BETTER REPAIR SERVICE BY AUTOMOBILE DEALERS. IT WILL REDUCE THE INCONVENIENCE, THE EXPENSE, THE FRUSTRATION, THE FEAR AND EMOTIONAL TRAUMA THAT LEMON OWNERS COMMONLY ENDURE; AND IT WILL PROVIDE A CLEAR STANDARD THAT IT WILL GIVE CONSUMERS AN EFFECTIVE, REASONABLE AND MEANINGFUL REMEDY WHICH WILL IN TURN, ULTIMATELY REDUCE COSTS AND DELAYS OF LITIGATION.

RIGHT NOW, THE CARDS ARE STACKED AGAINST THE AMERICAN NEW CAR CONSUMER. THERE ARE NO PRACTICAL ECONOMICAL, LEGAL OR PROCEDURAL SOLUTIONS AVAILABLE. THE FINANCIAL AND EMOTIONAL SQUEEZE OF A LEMON CAR MUST BE PUT ON THE MANUFACTURER WHERE IT BELONGS. THE CONNECTICUT LEMON LAW DOES THAT.

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STATE CAPITOL
HARTFORD, CONN. 06106

REPRESENTATIVE JOHN J. WOODCOCK
ASSISTANT MAJORITY LEADER
FOURTEENTH DISTRICT

97 MURIELLE DRIVE
P.O. BOX 684
SOUTH WINDSOR, CONNECTICUT 06074

MEMBER
GENERAL LAW COMMITTEE
STATE CAPITOL TELEPHONE
566-8700

July 18, 1983

THE LEMON LAW — LOOKING BACK AND LOOKING AHEAD

We in Connecticut made Consumer history on June 4, 1982 when Governor William O'Neill signed the nation's first "Lemon Law". It is a revolutionary measure which changes the balances of power, legal burdens and the economics of the complex consumer-dealer-manufacturer relationship.

Connecticut's "Lemon Law" was introduced in January, 1982 rather innocently. It was filed with the sole intention of creating a dialogue in the General Assembly and to ascertain whether our State's laws afforded adequate legal protection and relief to consumers who found themselves with new cars that defied repairs.

It has sent shock waves throughout the automobile industry, from the corporate skyscraper down to the assembly line, to the manufacturer's zone office, to the area dealers. It has generated international debate on such questions as: Is this law necessary? What happened in the industry to cause such an erosion in consumer confidence? Do the individual states have adequate and effective remedies available to new car consumers faced with having their substantial investments turn sour?

Problems engendered by "lemon" vehicles are neither new nor unique. The Federal Trade Commission recently reported that consumer complaints about automobile dealers and cars, which once were ranked fifth among the total of all complaints received, now have jumped to first place nationally. These findings are confirmed by the White House Office of Consumer Affairs, the Lou Harris Poll and the United States Council of Better Business Bureaus - - all of whom rank problems with the purchase and repair of automobiles as the "number one" consumer complaint across the country.

To say that Connecticut's "Lemon Law" has attracted the attention of other states is an understatement. To date, thirteen states have followed our example and three other similar proposals are awaiting gubernatorial action. In addition, some twenty others are presently considering "lemon" measures, with more to come in 1984. The legislature of Guam is also interested in Connecticut's "Lemon Law" experience. In Canada, a "Lemon Law" has been filed in the Ontario Parliament and is being looked at as a possible nation-wide measure and the concept is even being discussed currently in our Congress.

Connecticut, because it was first, continues to be the center of scrutiny. Inquiries are streaming in, seeking to determine whether and how the the Law is, or is not working. In the nine months since its enactment, cases have been filed both in the Courts and at the arbitration level. It is estimated that at least twenty cars have been replaced since October 1, 1982, and that is only the tip of the iceberg. The true measure of the Law's success lies more in the automobile industry's heightened awareness of what it must do to regain and retain consumer confidence in its products, and to see that customer's get fair and swift solutions when they encounter new car problems.

Even though it potentially benefits automakers in the marketplace and enhances their competitive position, that does not mean the manufacturers are issuing ringing endorsements of the "Lemon Law." Too many continue to oppose or undermine it at every turn, frequently aided by groups such as the Better Business Bureau and the American Automobile Association. However, dealer organizations from states such as Maine, Massachusetts and New Jersey have publicly endorsed the Law because it puts the burden of responsibility for a "lemon" where it belongs--on the manufacturer. As proof, our car dealers here in Connecticut report new interest and more assistance from their manufacturers in working out new car warranty problems.

As to the future, it is quite likely that the overwhelming majority of states will ultimately adopt the Connecticut "Lemon Law" in some form or other. As more states analyze it, as our experience with it is assessed and as we respond to input from the public and the industry, the law will be refined, modified if necessary and improved upon as time and developments require.

The "Lemon Law", as it now stands, was Connecticut's first word but not its last. It was a beginning which experience has shown can be improved upon. There are questions still to be answered: What should be done with a "lemon" that has been returned? What constitutes a "reasonable allowance for use" when a refund is given? Should new cars be protected beyond the present coverage of one year or 12,000 miles? New York's recently enacted "Lemon Law" covers defects for two years or 18,000 miles. But, after working with and evaluating the effects of our law for almost a year, we have found that the one area crying out for improvement is implementation by arbitration.

To explain briefly, the law had two primary goals. First, it defined the specific criteria for determining what a "lemon" is and at what point in time a suffering new car buyer could unquestionably seek a replacement or a refund. Secondly, it provided an opportunity for the consumer and manufacturer to settle disputes speedily and impartially through an informal arbitration process, thus avoiding, if possible, costly and lengthy court litigation required under other existing laws such as the Uniform Commercial Code. The process chosen was already embodied in Federal Trade Commission regulations known as "703." Basically, these are guidelines whereby the manufacturer provides an "informal dispute settlement mechanism" that is: 1) accessible at no cost to the consumer; 2) free of company influence in its decision-making; 3) based on written documentary evidence from all parties and impartial technical expertise; 4) scrupulous in its record-keeping and follow-up procedures; 5) expeditious in requiring decisions within 40 days of complaint initiation; and 6) nonbinding on the consumer who, if he is dissatisfied with the arbitrated settlement, is still free to pursue other available legal remedies.

Once a manufacturer informs the buyer -- either through or along with the car's warranty -- that an arbitration mechanism exists, the "Lemon Law" mandates that the mechanism must comply in all respects with "703" and its safeguards. Under the "Lemon Law", if such a mechanism exists, the consumer must use it before he can seek a refund or replacement. Two of the "Big Three" auto manufacturers have elected to include with their warranties "703" arbitration programs which fully comply with, and implement, the law's requirements and intent: Chrysler, whose Customer Satisfaction Boards are in their third year of operation in Connecticut, and Ford, which is inaugurating its Customer Appeals Boards in Connecticut after successful tryouts in other states.

However, General Motors, as a matter of corporate policy, has chosen to use the offices of the Better Business Bureau in handling customer complaints. Because it gives the customer no notice of any arbitration mechanism at the time of purchase or with its warranty, GM can keep its consumer disputes "in house" as long as it pleases before referring them to the Better Business Bureau a business organization, supported by the dollars of the business community and, at least here in Hartford, so closely allied to business that its offices are quartered within those of the local Chamber of Commerce.

What prompts my concern is the fact that nine months of experience of this GM "mechanism" convinces me that the consumer is not getting the "fair shake" intended under the "lemon Law." These conclusions are based on numerous complaints brought to my attention by frustrated consumers, plus inconsistent and contradictory policies and conduct on the part of the national offices of the Better Business Bureau.

The primary issue here is the Bureau's credibility and its responsibility to the public. For over a year, the Better Business Bureau and General Motors have repeatedly refused to disclose the terms of their contractual arrangements. At the same time, the Better Business Bureau holds itself out to the public as a consumer-oriented, neutral third party. As a consequence of that public posture, I believe the public has a right to know what the Better Business Bureau is being paid for its efforts on General Motors behalf and what its duties and obligations to General Motors are.

Secondly, and equally disturbing, is the fact that the Better Business Bureau is attempting to be all things to all men, as it were, and is thus deceptive in the process. It runs an aribtration program for General Motors which is openly admitted to be noncompliant; that is General Motors choice and the "Lemon Law" does not require any manufacturer to put a "703" program into place unless it gives customer's notice with a warranty that an arbitration mechanism exists. Three foreign car manufacturers -- Nissan Motors, Volkswagen/Porsche/Audi and Jaguar -- have done just that. Therefore, the "703" process should automatically have kicked into place and their arbitration programs must and should comply in all respect with the "703" process. However, these companies have also designated the Better Business Bureau as their dispute settlement mechanism and the Bureau, in turn, is providing a process that is different only in one or two respects from the same process it runs for General Motors. Yet the Bureau loudly proclaims and maintains itself to be a "703" mechanism and thus misleads the public. While it is free and nonbinding for the consumer the Better Business Bureau program is an oral presentation putting the consumer in argument against a battery of corporate officials. The process studiously avoids documentary evidence, discourages impartial technical input, avoids detailed recordkeeping, and by its own admission fails. more often than not, in resolving disputes within 40 days.

No matter how the Bureau represents itself to the public, there is no denying it finds itself a square peg unable to fit into a round hole. Its reputation historically, has been based on its function as a mediator. In that capacity, it has long served as a recognized "force for good" in settling disputes between consumers and local businessmen in a pragmatic, informal fashion which, in many instances, saved the ordinary citizen the grief of going to court. But, in undertaking arbitration programs for the corporate giants of the automobile industry, the Better Business Bureau is out of its class. One cannot use with Nissan Motors the same tactics one uses with a recalcitrant local driveway paving contractor and still assure a fair shake to the consumer with a "lemon" automobile that cost $10,000 but is incapable of going in reverse.

The Connecticut General Assembly, in its collective wisdom and as a matter of public policy, has defined the criteria with which "Lemon Law" arbitration programs must comply. If the Better Business Bureau does not meet those criteria it should either cease and desist from misrepresenting itself as the "genuine article" or else devise a program that does what the Law intends. Ultimately, however, it is the auto manufacturers who must choose to comply. That some have, but most have not, is where we stand at the moment. But time is on the side of the consumer.

The "Lemon Law" was filed to stimulate a dialogue on the parochial issue of whether or not Connecticut's laws afforded adequate legal protection to its new car buyers. Obviously, the volume and scope of the dialogue has expanded beyond anyone's expectations and beyond our borders. The broad acceptance of its concepts among other states is symptomatic of a greater national problem involving a troubled industry and a wary public. The Law was designed to make the industry more responsive and accountable to the people who buy its products. Its long-term effect will be to create an attitudinal change in the industry -- a change which will benefit our American manufacturers by restoring public confidence, and thus aid the industry in regaining its former stature.

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SPECIAL ANALYSIS

CONNECTICUT
GENERAL ASSEMBLY

File No. 700 (Previously
File No. 362)
4/28/82

sHB 5729 (as amended by House "A" and Senate "A")*
General Law Committee

AN ACT CONCERNING AUTOMOBILE WARRANTIES

AMENDED BILL SUMMARY: This bill would require a manufacturer of a new passenger carrying car, van or truck or the manufacturer's agent or authorized dealer to repair all defects covered by a written warranty if reported by the purchaser during the warranty period or within one year of the vehicle's delivery date, whichever is earlier. If these vendors are unable to repair a defect which substantially impairs the vehicle's use and value after a reasonable number of attempts, the bill would require the manufacturer to either replace the vehicle or refund the full purchase price and collateral charges, less an allowance for the consumer's use. A refund would be made to the consumer and to anyone holding a lien on the vehicle. If a manufacturer has established an informal dispute settlement mechanism that complies in all respects with relevant Federal Trade Commission regulations, the bill would require a consumer to attempt to settle the dispute through this mechanism before the bill's provisions requiring a refund or replacement would apply. The bill would specify that the manufacturer would have the following affirmative defenses in any suit to have a vehicle replaced or to recover the cost of a vehicle:

1. The defect does not substantially impair the vehicle's use and value.

2. The defect was caused by the consumer;s abuse, neglect or unauthorized modification of the vehicle.

The bill would specify that a "reasonable number of attempts" have been undertaken when:

1) the same problem has been subject to repair four or more times during the warranty period or within one year of the vehicle's delivery date, whichever is earlier; or

2) the vehicle has been out of service for repair for a cumulative total of 30 calendar days during the same period.

In addition, the bill would extend the term of a written warranty, the one-year period following the vehicle's delivery and the 30-day period for repair for the period of time during which repair services are unavailable due to war, invasion, strike or fire, flood or other natural disasters.

Finally, the bill would not limit other rights or remedies available to a consumer under any other law.

*House Amendment "A" eliminates everything after the enacting clause and rewrites the bill as summarized above. The Amendment differs from the original bill by:

1) requiring replacement or refund only for defects which substantially impair the vehicle's use and value;

2) increasing the allowance for the customer's use of the vehicle from the consumer's use before to the first report of a defect to the consumer's use before this first report and during any subsequent period when the vehicle is not out of service for repair;

3) changing the amount of time the vehicle must be out of service for repair from 20 business days to 30 calendar days;

4) allowing the extension of the warranty period, one-year period following delivery and the 30-day period because of natural or other disasters; and

5) establishing the affirmative defenses for manufacturers in any claim arising under the bill's provisions.

*Senate Amendment "A" adds the provision concerning the informal dispute settlement mechanism.

EFFECTIVE DATE: October 1, 1982

Substitute House Bill No. 5729

PUBLIC ACT NO. 82-287

AN ACT CONCERNING AUTOMOBILE WARRANTIES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

(NEW) (a) As used in this act: (1) "Consumer" means the purchaser, other than for purposes of resale, of a motor vehicle, any person to whom such motor vehicle is transferred during the duration of an express warranty applicable to such motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty; and (2) "motor vehicle" means a passenger motor vehicle or a passenger and commercial motor vehicle, as defined in subdivisions (35) and (36) of section 14-1 of the general statutes, as amended, which is sold in this state.

(b) If a new motor vehicle does not conform to all applicable express warranties, and the consumer reports the nonconformity to the manufacturer, its agent or its authorized dealer during the term of such express warranties or during the period of one year following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, the manufacturer, its agent or its authorized dealer shall make such repairs as are necessary to conform the vehicle to such express warranties, notwithstanding the fact that such repairs are made after the expiration of such term or such one-year period.

(c) If the manufacturer, or its agents or authorized dealers are unable to conform the motor vehicle to any applicable express warranty by repairing or correcting any defect or condition which substantially impairs the use and value of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer shall replace the motor vehicle with a new motor vehicle or accept return of the vehicle from the consumer and refund to the consumer the full purchase price including all collateral charges, less a reasonable allowance for the consumer's use of the vehicle. Refunds shall be made to the consumer, and lienholder if any, as their interests may appear. A reasonable allowance for use shall be that amount directly attributable to use by the consumer prior to his first report of the nonconformity to the manufacturer, agent or dealer and during any subsequent period when the vehicle is not out of service by reason of repair. It shall be an affirmative defense to any claim under this act (1) that an alleged nonconformity does not substantially impair such use and value or (2) that a nonconformity is the result of abuse, neglect or unauthorized modifications or alterations of a motor vehicle by a consumer.

(d) It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranties, if (1) the same nonconformity has been subject to repair four or more times by the manufacturer or its agents or authorized dealers within the express warranty term or during the period of one year following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, but such nonconformity continues to exist or (2) the vehicle is out of service by reason of repair for a cumulative total of thirty or more calendar days during such term or during such period, whichever is the earlier date. The term of an express warranty, such one-year period and such thirty-day period shall be extended by any period of time during which repair services are not available to the consumer because of a war, invasion, strike or fire, flood or other natural disaster.

(e) Nothing in this act shall in any way limit the rights or remedies which are otherwise available to a consumer under any other law.

(f) If a manufacturer has established an informal dispute settlement procedure which complies in all respects with the provisions of title 16 Code of Federal Regulations Part 703, as from time to time amended, the provisions of subsection (c) of this section concerning refunds or replacement shall not apply to any consumer who has not first resorted to such procedure.

Certified as correct by

Legislative Commissioner.

Clerk of the Senate.

Thomas P. Sheridan

Clerk of the House.

Approved June 4, 1982

William A. O'Neill

Governor.

State of Connecticut
HOUSE OF REPRESENTATIVES
STATE CAPITOL
HARTFORD, CONN. 06106

REPRESENTATIVE JOHN J. WOODCOCK
ASSISTANT MAJORITY LEADER
FOURTEENTH DISTRICT

97 MURIELLE DRIVE
P.O. BOX 694
SOUTH WINDSOR, CONNECTICUT 06074

MEMBER
GENERAL LAW COMMITTEE
STATE CAPITOL TELEPHONE
566-8700

STATEMENT - MARCH 2, 1983 PRESS CONFERENCE

Just last week, many of us gathered at an almost festive occasion, the first new car given to a Connecticut consumer, which replaced a car that turned out to be a "lemon" as defined by Connecticut's recently implemented Lemon Law. A retired East Hartford couple can now drive their car in reverse when they need to. I do not think anyone can realistically claim that there would have been such a speedy and thorough resolution if the Lemon Law had not been in effect.

Today's discussion of Connecticut's Lemon Law is less festive, because despite last week's success involving one consumer complaint, there are recent disturbing indications that the legislative intent of the five month old law is being ignored and subverted.

Ignored in that most auto manufacturers have not yet provided consumers with arbitration procedures as spelled out by the law, which means most new car buyers who believe they have a lemon will have no choice except to go to Court. While the law makes it much easier for the consumer in Court, the purpose of the law was not to increase litigation. The whole rationale of the law, and one of the reasons it passed this Legislature so overwhelmingly in 1982, was to encourage cooperation between consumers and the industry in settling complaints about lemon cars. That is why the law calls for consumers to seek to resolve new car disputes by using the manufacturers arbitration process before going to Court. The key here is that the arbitration process must comply with the Lemon Law, and here in Connecticut that is simply not the case.

To date, only five auto makers, Chrysler, General Motors, Nissan, Volkswagen and Jaguar have set up or are in the process of setting up, any kind of arbitration mechanisms. All but Chrysler have chosen to use the three Better Business Bureau offices in Connecticut. However, a just released study by the Office of Legislative Research shows the arbitration procedures of the BBB to not comply with the Lemon Law in at least ten areas. – serious technical — one [illegible]

I have called this Press Conference most regretfully and reluctantly. Tomorrow, I will be addressing the Connecticut Bar Association in Bridgeport where I will be discussing the Lemon Law and the status of the manufacturers arbitration programs. Before doing that, I felt it appropriate that I first discuss it here at the State Capitol. My remarks today are prompted by the Office of Legislative Research report, the complaints, that I have very recently received from Connecticut consumers about the BBB's arbitration programs, and my concern over the legal deficiencies of the industry's approach to arbitration under our Lemon Law.

The first and most serious deficiency in the General Motors Arbitration Program, is their complete failure to provide their customers with notice of the availability of an arbitration program, as mandated by the Connecticut Lemon Law. The foundation [illegible] arbitration is notice. The Lemon Law specifically provides for a very strong notice requirements such as on the warranty, brochures, dealer's posters, etc. Nine months ago, Governor O'Neill signed this measure into Law, yet General Motors has failed to abide by even one of these notice requirements. They have not given the Law lip service, they thumb their nose at it. This lack of good faith undermines the law and creates a deceptive atmosphere in the mind of the public. How can people use arbitration in dealing with new car problems when they know nothing of it? Who benefits from such a situation? Obviously, not the consumer.

The three consumers who are here this morning have good cases under the Lemon Law. They own General Motors products. They learned of General Motors Arbitration Program in various ways, but not through the efforts of the company or the Better Business Bureau. Proper notice is even important for those consumers who are aware of the law. A couple from East Killingly, Connecticut called the Hartford Better Business Bureau about their lemon car, and after being put on hold for ten minutes, were told "you have to go to Worcester, because you are not in the Hartford jurisdiction." But Worcester is in Massachusetts, and this is a Connecticut law: an incredible story. If there was proper notice, the name and toll free telephone number of the arbitration program would have been in the new car manual, the vehicle warranty, and posted at the dealer where these consumers bought their car--none of which was done, or which is under consideration by General Motors.

E.J.

The Office of Legislative Research report comprehensively discusses the Better Business program's failures under the Lemon Law. One of these failures, from the practical standpoint, is more serious than the others. That is the Better Business Bureau's policy of automatically referring lemon car complainants back to the dealers and then back to the zone representatives of the manufacturers, whether or not the consumers have already taken these steps, which is

Running interference

virtually the case in every situation. So consumers, seeking relief from the BBB's program, find only more delay and frustration. This is an added twist to the old "wear down" strategy used for so long by the auto industry. . . how many consumers have given up in total disgust after this?

This continuous referral back through a maze the consumers have already gone through is not only improper and unnecessary, it is a violation of the Lemon Law, as spelled out in the Federal Trade Commission 703 Regulations which any arbitration procedure under Connecticut's Lemon Law must abide by. Contrary to the Better Business Bureaus policies, the Lemon Law provides that a new car owner has the right to go into immediate arbitration, with the time frame being approximately forty days.

Of equal importance has been the fact that there is and has been no cooperation or response from the Better Business Bureau when it comes to requests by Legislative Researchers and even the media for data or information regarding the impact of its arbitration program. This is another serious violation of the Lemon Law with very important long-term ramifications.

In any objective evaluation of the Lemon Law, numbers will play an important part: How many complaints; how many of these complaints met the criteria of the law; how many were settled prior to arbitration; how many went to arbitration; how many were settled by arbitration; and how many were taken directly to court or were taken to court after arbitration procedures were completed. Since the law is very clear in the criteria for determining what is a lemon car, all one needs to know is how many times a car has been in for repairs or for how many days it has been out of service. Adding two lines to any form now used by the Better Business Bureau could gather that information.

However, despite the critical role of data, or perhaps because of it, Executive Vice-President Karl Tracey of the Hartford Better Business Bureau was quoted in a New York Times article on January 30 as stating that "his agency will not concern itself with whether a complaint is covered by the Lemon Law until and if it reaches the arbitration process. There is no way I can set up a system that I can tally potential lemon cases," Mr. Tracey is quoted as saying.

To refuse to keep track of potential lemon law complaints, to refuse to note two simple criteria, serves only the interest of the auto manufacturers. And to record only those complaints which reach the arbitration process will mean only an unknown fraction of the cases will ever be acknowledged, and in other states where the media is not as critical and probing as in Connecticut, this distortion, this propaganda device or card stacking, may well tip the balance against enactment of new lemon laws. Whether or not the Lemon Law succeeds in Connecticut. . . and I defy anyone to prove that it has not already succeeded. . the industry must prove that it is not working, is not needed, is not wanted. Only by manipulated numbers can they do that.

Even more disturbing . . . even astounding . . . is the statement made by Alvin Kerstein, President of the Better Business Bureau of Western Connecticut to the Connecticut Business Journal on August 10, 1982, after the law was passed and before it had even gone into effect. Mr. Kerstein was quoted as saying, "There is no such thing as a lemon. There is no car that can't be repaired with the right mechanic and the right parts." The article then went on to note that Kerstein ". . . had no use for the lemon law . . ."

While Mr. Kerstein may have no use for the law, I think the public . . . which Mr. Kerstein reputedly serves for the Better Business Bureau . . . does seem to have use and need for it. That same article noted that the State Consumer Protection Department reports some ten thousand complaints each year dealing with autos . . . making it the major consumer probelm in Connecticut. How can Mr. Kerstein help solve consumer problems in the most effective manner, wheth they involve using the lemon law or not, when he has already displayed a bias against it, and even against consumers who claim rightly that their car is indeed beyond repair. Pity the poor consumer who after being stonewalled and faced with delay after delay by the dealer and the manufacturer, who is then given the same treatment by the agency which is supposed to be implementing a law designed to help him.

Before I finish with the Better Business Bureau there is one more question that has yet to receive an answer. The Better Business Bureau is paid by General Motors and the others. No one knows what the full financial arrangement is. No one knows what duties are covered. If the Better Business Bureau is going to hold itself out to the public as a credible, objective party to this process, they should let the public know what its deal with the manufacturer is. What do its payments cover? Does the Better Business Bureau get paid for these repeated referrals back to the dealer and the manufacturer which is in violation of the Law?

There are obviously huge problems in the General Motors' Better Business Bureau program. It is clearly not in compliance with our Lemon Law, and thus General Motors' lemon owners will be forced to go directly to court. Why can't the company that earns one billion dollars net profits in 1982 invest one hundred thousand dollars here in Connecticut so as to improve its customer relations and comply with our law.

Because of these concerns, because of the discrepancies between what the law requires and what General Motors and the Better Business Bureau are doing, I have written the State Attorney General, Joseph Lieberman. In my letter I have asked him to investigate why General Motors has not provided proper notice to its new car buyers, why the Better Business Bureau has not followed the Federal Trade Commission's guidelines in its arbitration procedure for complaints concerning new cars and why there is a lack of data and information and whether data being collected will truly reflect the magnitude and importance of the lemon car problem.

I am doing this because I feel it is a vital part of the democratic process to maintain legislative oversight on how laws are implemented, making sure that those carrying out the implementation of the laws meet the public policy goals set by the laws. I also believe that we in Connecticut have a responsibility to lawmakers and consumers in other states to implement the nation's first Lemon Law as effectively and fairly as possible , and most importantly, for these other states, to see that our law is evaluated and judged as objectively as possible.

I leave you w/ many serious questions that need immediate answers:

(1) Why does GM refuse to comply w/ the LL?
(2) Why does BBB tolerate this non-compl.?
(3) Why hasn't the BBB followed the Law?
(4) Why does BBB let biased people like Mr. K, run its program?
(5) What is the financial arrangement between BBB and manufacturer and what does it cover?

THE NEW YORK TIMES, SUNDAY, APRIL 4, 1982

Putting The Squeeze On Car Makers

By [illegible]

[illegible]

[illegible]

THE WALL STREET JOURNAL, July 12, 1983

SECTION

'Lemon Laws' Gaining Popularity Despite Auto Makers' Opposition

By William M. Bulkeley

Staff Reporter of The Wall Street Journal

EAST HARTFORD, Conn. – Michael White's 1982 Chevrolet Camaro had a transmission problem that wouldn't go away. The clutch was so stiff he could barely depress it. It whined and squealed. "I cursed it every time I shifted," he says.

Mr. White took the car to his dealer seven times in five months. Then he told the dealer to give him a new car under the state's lemon law, which forces auto makers to replace cars if they can't fix them in four attempts or 30 days in the shop. Soon he had a new 1983 Camaro. He paid $1,300 for the car, reflecting the 11,000 miles he had put on the old car and some optional equipment.

Mr. White says his success in wheedling a new car out of General Motors Corp. shows the effectiveness of Connecticut's nine-month-old lemon law, the first such law in the country.

General Motors disagrees. Replacing Mr. White's car is the type of action the company occasionally takes "as a matter of good customer relations," says a GM spokesman in Detroit. GM says lemon laws are unnecessary, encourage litigation and "mislead customers into thinking some new right is being bestowed upon them."

Despite the opposition of GM and other car makers, lemon laws are sweeping the country. Since Connecticut's law went into effect Oct. 1, 10 other state legislatures have passed similar laws, including California, New York and New Jersey. Ten more states may adopt such laws by year-end, advocates say.

Supporters' Arguments

If Connecticut's experience is typical, car replacements will remain uncommon. The industry says it has been building better cars and repairing them faster, anyway. But supporters of the new laws maintain that they will subtly force dealers and manufacturers to respond more attentively to consumer complaints.

Such legislation is enormously popular. "This is the kind of consumer issue that looks good when legislators go back home," says Charles L. Spilman, director of state relations for the Motor Vehicle Manufacturers Association, a trade group that lobbies against the bills. In New York, the bill was approved by a Senate vote of 51-1 and a House vote of 135-2. In Massachusetts, 14 legislators introduced lemon-law bills, one of which passed.

Lemon laws, or repair-replace laws, as the auto industry calls them, aren't a new idea. The Motor Vehicle Manufacturer's Association says such a law was first proposed in Hawaii in 1972.

John J. Woodcock, a legislator from South Windsor, Conn., who wrote Connecticut's law, says he got the idea when he read a column by humorist Erma Bombeck that mentioned a California bill. When he proposed the bill, other legislators and the local press were amused, he recalls. But he arranged a public hearing, and "people came from all over the state with their own personal horror stories" about new cars that kept breaking down, he says. "The timing was right, and the grass-roots support made it a political home run for any legislator," he says.

Connecticut's lemon law is similar to most of the laws that have been passed since. It says that if a car dealer doesn't repair substantial defects covered by the new-car warranty within a reasonable time, the consumer may be entitled to a comparable new car or a refund. The law defines a reasonable period for repair efforts as four separate trips to repair the same defect or a total of 30 days in the repair shop. If the auto maker or dealer objects to providing a new car, the car owner must go through an independent arbitration procedure—if the car manufacturer has one—before going to court to sue.

A GM spokesman contends that lemon laws, or repair-replace laws, are unnecessary, encourage litigation and "mislead customers into thinking that some new right is being bestowed upon them."

The independent arbitration panels have existed in some places for a few years, and auto makers say the panels make lemon laws unnecessary. Ford and Chrysler have established panels to judge disputes between consumers and car makers and dealers; General Motors Corp., Nissan and Volkswagen have contracts with the Better Business Bureau. Many importers use a National Automobile Dealers Association program called Autocap to arbitrate disputes.

The arbitration panels are made up of people who aren't employed in the industry, and are free to consumers. Their decisions are binding on the company, although consumers can usually appeal decisions to the courts. Generally they handle disputes over whether an auto maker should pay for problems that occur after a warranty expires.

Auto makers and consumer groups say the panels work. Ford Motor Co.'s panels, which were started in 1977 and are being expanded nationally, have judged 7,500 cases. The boards decided Ford or its dealers were fair about two-thirds of the time and gave the consumers more than Ford had offered the other third. A Ford spokesman says Ford has been ordered to replace a car about a dozen times. "Typically a new board tests if we're serious about replacing a car—usually a Lincoln," a spokesman says.

Replacing Cars

The three big U.S. auto makers didn't have arbitration procedures in Connecticut before the law was passed, so it's impossible to tell if they have changed their practices because of the law. General Motors says it has replaced nine cars in the state since last September. Nationwide, it says it replaced 257 cars since 1978, when it started the arbitration agreement with the Better Business Bureau.

In Connecticut, some lawsuits are pending, but no lemon-law suits have gone through the Connecticut courts, attorneys say.

Nevertheless, the lemon law is having an effect, advocates say. Mr. Woodcock, the legislator who wrote the law, concedes that nobody knows how many cars have been replaced. But, he says, "the true measure of the effect is the spirit of cooperation between dealer and consumer in working things out." William H. Clendenen, a New Haven, Conn. lawyer who says he has brought a lemon-law suit against General Motors, says the law "should make a difference for consumers" because it transfers responsibility from the dealer to the auto maker. "The deep pocket, the manufacturer, now has a clear responsibility. Prior to this the dealer often had to bite the bullet."

The Connecticut Automobile Dealers Association initially opposed the law because they thought it would lead to a lot of lawsuits, but "after some experience, we see the manufacturers are stepping forward and working out the arbitration system," says Richard Meek, executive vice president of the dealer trade group. "I told the national association meeting they don't have that much to fear from the laws."

The law seems to have improved dealer repair practices. After the law went into effect, manufacturers sent representatives to dealerships, advising them to avoid long tie-ups in the shop and to notify dealers about recurring new-car problems. "Now we put on the computer the number of times and days a car is in the shop," says Harvey Lipman, owner of Lipman Chevrolet in East Hartford.

What's Not Included?

1. Defects which do not substantially impair the vehicle's use and value.

2. Defects caused by the consumer's abuse, neglect or unauthorized modification of the car.

Note:

Before you demand a refund or replacement, you must first go through any mediation procedure the manufacturer may have established, providing that the procedure conforms to Federal Trade Commission regulations.

This mediation procedure is known as an "informal dispute settlement mechanism". And, according to Federal Trade Commission regulations, such a mechanism must:

1. set up requirements for consumer notification;
2. be free from the manufacturer's influence and the decision-makers must not be associated in any way with a party to the dispute;
3. be free of charge to the consumer;
4. generally settle the dispute within 40 days.

You Should Know . . .

The "Lemon Law" does not limit any rights or remedies available to you under any other law.

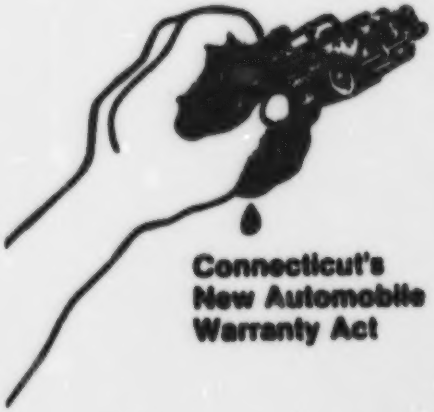
Remember,

The "Lemon Law" applies only to new cars, purchased in Connecticut, after October 1, 1982. The law addresses defects reported during the warranty period or within one year from the vehicle's delivery date, whichever is earlier.

***This pamphlet represents only a summary of the major aspects of the law. For further information, refer to Public Act 82-287 or contact your attorney.*

THE LEMON LAW

squeezing The Lemon Law...



Connecticut's New Automobile Warranty Act

STATE OF CONNECTICUT
William A. O'Neill, Governor
DEPARTMENT OF CONSUMER PROTECTION
165 Capitol Avenue, Hartford, CT 06106
Mary M. Heslin, Commissioner

From the Commissioner's Desk

The purchase of a new automobile is, for most consumers, one of the largest investments they will ever make. Unfortunately, too many new car transactions turn sour; the vehicle spends more time in the repair shop than on the road, its owner watching the "clock" on his warranty ticking away.

There's no doubt that defective new cars pose a most serious problem to consumers. It's not just their investment at stake but sometimes their very safety.

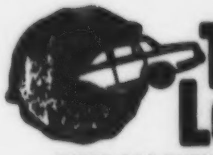
I believe that Connecticut's new "Lemon Law", the first of its kind in this country, will provide a measure of protection and a tool to remedy the frustrating and sometimes overwhelming problem of owning a lemon.

This pamphlet was written to help you understand the essential points of this new law. For more specific information, contact your attorney.

Sincerely,

Mary M. Heslin

Mary M. Heslin, Commissioner
Department of
Consumer Protection



The Lemon

EVERY CAR OWNER'S NIGHTMARE

Auto complaints are number one on the list of consumer tales of woe.

But as of October 1, 1982, Connecticut's so-called Lemon Law may provide some relief . . .

PROVIDING, YOU SAVE YOUR REPAIR RECORDS!

Public Act 82-287

"An Act Concerning Automobile Warranties" boils down to this: if your new car turns out to be a lemon, you may have the right to a new one or your money back.

But,

in order to prove you're a bonafide lemon-owner, be sure to keep all your repair bills and records in a secure place.

So What's A Lemon?

This law defines a lemon as a new motor vehicle (passenger car, van or truck) which does not conform to the express warranty and which, after "a reasonable number of attempts", cannot be repaired so that it does conform to that warranty.

What's A Reasonable Number of Attempts?

1. When the same problem has been subject to repair four or more times during the warranty period* or within one year of the delivery date,* whichever is earlier; or

2. The vehicle has been out of service for repair for 30 days or more during the same period.*

**These time periods may be extended when repair service is unavailable due to war, strike or natural disaster.*

Jeffrey D. Gray, B.A., B.C.L., LL.B.
barrister and solicitor

3284 Yonge Street, Suite 201, Toronto, Ontario M4N 3M7
Telephone (416) 488-9007

November 2, 1983

Mr. Allan Bonner
Office of the Mayor
City of North York
5100 Yonge Street
Willowdale, Ontario
M2N 5B7

Dear Allan:

Re: Submissions to Sub-committee of the Legislation and Licensing Committee

The following is a summary of the submissions which I intend to make at the upcoming hearings of the above noted sub-committee. Most of these topics were discussed during our meeting of Wednesday, October 12, 1983. It was a pleasure meeting you at that time and I am optomistic that with sufficient team effort the intended legislation can be eventually passed.

I will now summarize my intended representations in headings which are as follows:

A) NEW CARS

a) Problem: Inherent defects
Required: Lemon Law Protection providing that if a substantial defect is not repaired after four attempts or the car is out of service for thirty days or more to repair such a substantial defect the consumer will be entitled to a new car or a refund of the purchase price, less an allowance for use of the vehicle.

b) Problem: Repeated attempts to fix same problem
Required: Lemon Law Protection in that if the problem can not be repaired satisfactorily during the warranty period such repairs will be made outside the warranty period at no charge to the consumer.

c) Problem: Availability of parts
Required: Certain specified provisions requiring the manufacturer and dealer to carry a fixed supply of parts at the dealership or warehouse. If parts are unavailable substitute parts are to be installed in the vehicle pending receipt of new manufacturer's parts.

d) Problem: Durability of the car
Required: Specified durability period for various parts of the car divided between accessories and drive train. Similar concepts appear in the Quebec Civil Law.

e) Problem: Price changes in new car contracts
Required: Once the price has been agreed upon and accepted in the Agreement of Purchase and Sale that price will not be altered other than by a variation to the contract executed by both parties thereto. If the price must be increased the consumer is to have the option to cancel the agreement.

f) Problem: Variation of the value of a trade-in vehicle
Required: Once the price of the trade-in vehicle is agreed to no alteration will take place without the express and written consent of the consumer. If the consumer disagrees with the devaluation of the trade-in vehicle the contract can be terminated with the deposit returned to the consumer.

g) Problem: Ambiguous clauses in warranties and contracts
Required: Any ambiguities in a contract or warranty is to be interpreted in the favour of the consumer.

h) Problem: Consumers forced to gamble under warranty
Required: If the consumer complains of a problem during the warranty period he will not be faced with the decision as to whether he wishes to pay for the disassembly and reassembly of a part of the car if upon inspection a defect is not discovered. With the high technology used in the manufacture of cars today and the extremely high cost of disassembling various components in modern cars it is unfair to make a consumer decide whether he wishes a part, which is covered under warranty, to be examined or not.

i) Problem: No privityofcontract between consumer and manufacturer
Required: The manufacturer to be directly answerable to the consumer and not being able to set up the common law defence of privity of contract in any lawsuit by the consumer against the manufacturer.

j) Problem: Work orders not given to consumers for warranty related repairs
Required: On any and all repairs done under warranty the consumer is to be given a clearly written copy of the work order pertaining to the repair on his or her car.

k) Problem: Paint defects
Required: If any more than a mere touch up is required to rectify paint defects on a car, in other words the painting of a panel or panels, the consumer will be entitled to a new vehicle or a reduction in the purchase price of that vehicle which would be worth less on resale as a result of not original paint being on that vehicle.

l) Problem: Car remaining at dealers service department for extended periods of time
Required: The New Car Warranty be extended for every day the vehicle must be in the dealership for repairs under warranty.

m) Problem: Dealership tampering with manufacturers suggested retail price
Required: All vehicles retain the factory sticker on the windshield and not be removed prior to delivery to the consumer.

n) Problem: Advertising appearing in the media
Required: That all representations and warranties made in advertisements or directly by sales representatives, by manufacturers, distributors and dealers form part of the ultimate contract of Purchase and Sale.

o) Problem: Consumer not able to obtain financing
Required: That on the purchase contract of all new cars a maximum rate of financing be made a condition precedent and if that rate is not obtainable by the consumer or the dealer, on behalf of the consumer, the contract will be terminated and all deposits returned to the purchaser.

p) Problem: Improper chance to inspect vehicle at time of delivery
Required: A 48 hour cooling-off period within which time the consumer will be able to properly inspect the condition of the vehicle. If the consumer is not satisfied for legitimate reasons, he can return the vehicle for a full refund of the purchase price and any deposits.

q) Problem: Dealerships subcontracting options out to other companies.
Required: If a dealer subcontracts any optional additions to the vehicle the dealer is directly responsible to the consumer. An example of this is the common practice of dealerships subcontracting rustproofing to other companies then sending the consumer off to claim under warranty against those companies.

B) USED CARS

a) Problem: Dealerships closing up business and consumers left without recourse
Required: A substantial increase in the bond provided by car dealerships to adequately protect consumers in the event that they are no longer available to be pursued. The bonds should be on a per car basis to allow for a reasonably sized fund from which consumers can obtain compensation.

b) Problem: Warranties on used cars
Required: Legal warranties on used cars the length of which will vary inversely with the age and mileage of the particular vehicle. A good example is Sections 159 and 160 of the Quebec Consumer Protection Act.

c) Problem: Inadequate information provided to consumers
Required: Complete and total disclosure to consumers of all necessary information pertaining to the particular used vehicle as set out in Sections 155 and 156 of the Quebec CPA. The disclosures must form part of the contract as all other terms appearing thereon.

d) Problem: Repairs required on a used car
Required: Prior to the completion of the transaction the dealership should provide to the consumer a proper estimate for repairs required on the vehicle.

e) Problem: Certification improperly done
Required: The consumer be given the right to have the certificate varified by either a mechanic of his choice or the Ministry of Transportation and Communications at the cost of the dealer.

f) Problem: Lack of sufficient time to inspect the vehicle properly
Required: A 48 hour cooling-off period within which time the consumer can have the car properly examined by a qualified mechanic to verify the represented condition of the vehicle. If the consumer is unhappy, justifiably, he can return the car for a full refund of the purchase price and any deposits.

g) Problem: Inability of the consumer to obtain reasonable financing
Required: A maximum rate of financing appear as a condition precedent in the contract of Purchase and Sale and if financing at the agreed upon maximum is not obtainable by the consumer or the dealership on his or her behalf the contract will be terminated with all monies refunded to the consumer.

h) Problem: Variation in the price of the used car or any trade-in.
Required: That once any value or price is established in the contract it cannot be varied except by written consent of both parties. If the consumer

does not agree to the variation the contract can be cancelled and all monies repaid to the consumer.

i) Problem: Representations made to the consumer at the time of the sale of the vehicle
Required: That all representations made form part of the contract and if false or negligent can render the dealership liable civilly.

j) Problem: Ambiguities in the contract of Purchase and Sale
Required: Any ambiguities in the Agreement of Purchase and Sale be interpreted to the benefit of the consumer.

C) CAR REPAIRS

a) Problem: 5 o'clock surprise
Required: Written estimate be given to the consumer prior to the commencement of any repair work on his or her vehicle which estimate must be signed by the consumer to authorize the work to be performed. The estimate cannot be changed without the express approval of the consumer. If the amount of repairs is in excess of that estimated, the mechanic can only impose a mechanic's lien on the vehicle for the amount of the estimate. Any excess must be pursued by the mechanic independently.

b) Problem: Additional labour required merely for the inspection and diagnosis of the problem
Required: Prior to the disassembly of any part of the consumer's car a written estimate be provided to the consumer stating the maximum charge for the disassembly and reassembly of the part concerned.

c) Problem: General category of Shop Supplies appearing on work order
Required: That all shop supplies be itemized and justified if requested by the consumer.

d) Problem: Type of part to be installed in the consumer's car
Required: An explicit statement on the estimate regarding whether the part will be new, rebuilt or used or other.

e) Problem: Failure to disclose time required to make repairs
Required: A reasonable estimate of the number of days or weeks required to adequately repair the motor vehicle.

f) Problem: Illegible estimates and work orders
Required: That all estimates on work orders be clearly printed so that the consumer will have no difficulty in reading it and understanding the parts and work supplied.

g) Problem: Various guarantees being given for repair work done by different mechanics
Required: A Statutory Guarantee period of one year or 12,000 miles on work exceeding $50.00.

h) Problem: Failure to provide the customer with the old parts
Required: That on all repairs carried out the parts removed be returned to the customer with a written declaration that the parts being returned are those which were taken out of the customer's car.

i) Problem: Customer not being made aware of the hourly rate for labour on auto repairs and the price of parts
Required: A sign of reasonable size posted in a conspicuous location at the garage indicating the hourly rate chargedfor labour and that the customer be provided with a list of parts setting out the cost of each as related to the particular repair.

j) Problem: Repair being subcontracted to specialists
Required: If a repair is subcontracted to a third party the original mechanic is to be directly liable to the customer and shall not be able to avoid liability by forcing the customer to deal directly with the subcontractor.

D) OTHER MATTERS

a) Problem: Enforcement of Lemon Law provisions
Required: The creation of a tribunal composed of mechanical experts who are not in any way funded directly or indirectly by any commercial enterprise.

b) Problem: Damages recoverable
Required: In the case of new cars the consumer be entitled to a new car in exchange for the original one, the refund of the purchase price, or a reduction in the purchase price representing a reduction in value. As well the consumer should be able to obtain punative damages in the case where he is treated unfairly by the manufacturer and or dealer.

I hope that this summary will be helpful to you in preparing His Honour Mayor Lastman in advance of the representations and submissions to be made by myself on behalf of the APA. If you have any questions or comments prior to the date of the hearings please contact me at your convenience.

Yours very truly

Jeff Gray

JEFF GRAY
Barrister and Solicitor

JG:dvw

C.C. Ms. Eileen Berriman
Metro Toronto Clerk's Office
2nd Floor, City Hall
Toronto, Ontario
M5H 2N1

Ontario
Ministry of
Consumer and
Commercial
Relations

555 Yonge Street
Toronto Ontario

416/963 -0302

Submission to:

His Worship Mayor Mel Lastman
Sub Committee Chairman
Legislation and Licensing Committee
Metropolitan Toronto

Re: Motor Vehicle Repair Industry

OVERVIEW

Motor vehicle repair is a huge industry where an estimated 100,000,000 repair items are carried out yearly in Ontario. It is an area of great concern to consumers as indicated by complaint statistics. The industry is largely unregulated which is compounded by the absence of any single organization which could be representative of the entire industry. There are 40,800 licenced motor mechanics working throughout the Province and several thousands of other persons performing motor vehicle repairs without certification or specific training. The number of repair facilities is unknown. They range from the one man garage in small town, Ontario to the huge motor vehicle dealerships in large urban centres. There has been franchising of specialized repair facilities such as transmissions, radiators, and exhaust systems. Thousands of gasoline stations engage in various forms of motor vehicle repair. 9,457 repair facilities are licenced by the Ministry of Transportation and Communications to issue Safety Standards Certificates. Many others do not participate in the program.

During the past seven years segments of the industry have made voluntary efforts to win consumer confidence. Many will return replaced parts. Others will not perform unauthorized repairs and conscientiously adhere to estimated cost of repair. Shop rates are prominently posted and customer satisfaction is both advertised and pursued. There is unfortunately sufficient numbers of unscrupuluous operators willing to take advantage of a consumer's general lack of mechanical knowledge and carelessness. Careless to the extent a work order may be signed in blank, or failing to challenge a bill when they suspect overcharging or unnecessary repairs performed. The advent of self-serve gasoline stations has caused consumer neglect of preventive maintenance items. Additionally, the high cost of new vehicles, cost of borrowing, and an uncertain economy has caused many consumers to keep their vehicles for longer periods, all of which contribute to more work for the repair industry.

APPLICABLE LEGISLATION

The Business Practices Division of the Ministry of Consumer and Commercial Relations administers 12 Acts. The common theme throughout this legislation is consumer protection. Four Acts have direct bearing on the motor vehicle industry as follows:

1. MOTOR VEHICLE DEALERS ACT, R.S.O. 1980, CHAPTER 299 - provides for the registration of all new and used car dealers and salespersons. Although not specifically directed to a dealer's repair facilities,it is a "lever" to rectify repair problems. Approximately 5,000 dealers are registered in the Province.

2. CONSUMER PROTECTION BUREAU ACT, R.S.O. 1980, CHAPTER 88 - this one page Act provides for the establishment of the Bureau and a mechanism for mediation and investigation of complaints under all our legislation.

3. CONSUMER PROTECTION ACT - R.S.O. 1980, CHAPTER 87, provides for disclosure of cost of borrowing and immediate Cease and Desist process for false advertising.

4. BUSINESS PRACTICES ACT, R.S.O. 1980, CHAPTER 55, - omnibus (non-regulatory) legislation, establishes a code of conduct in the marketplace. Our most effective tool in dealing with motor vehicle repair problems.

The Ministry of Transportation and Communications licence motor vehicle inspection stations under the Highway Traffic Act for the issue of Safety Standards Certificates.

The Ministry of Colleges and Universities administer a program of apprenticeship training and certification of motor vehicle mechanics.

PROGRAM DELIVERY

Our approach to motor vehicle repair problems falls into four categories:

CONSUMER EDUCATION;
COMPLAINT MEDIATION;
ENFORCEMENT, and
LEGISLATION REVIEW

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1. CONSUMER EDUCATION

The Ministry publishes and disseminates easy to read, colourful brochures such as "The Nuts and Bolts of Car Repair" and "Sorting Out Transmission Troubles". Press releases are regularly made highlighting recent convictions, prosecution statistics, administrative process, and potential abusive practices in the marketplace. Additionally, members of the Division regularly perform media interviews and speaking engagements to consumer groups.

2. COMPLAINT MEDIATION

- 1500 written repair complaints are mediated annually. Several thousand telephone calls are received on the same subject where advice and guidance may be given to the caller. A complaint is referred for investigation if the abuse is deemed serious, several complaints have been received against the same repair outlet, or the repair outlet has either ignored or refused to respond to requests for mediation.

3. ENFORCEMENT

Investigation of motor vehicle repair problems is now a two-tiered effort. Since November 1979, four members of the Metropolitan Toronto Police Auto Squad have been working with investigators from this branch, attacking motor vehicle repair frauds and odometer tampering. The success of the joint forces operation has been phenomenal with over 2200 criminal charges being processed since inception. Since January 1, 1982, 308 criminal fraud charges have been laid against 41 motor vehicle business premises in the Metropolitan Toronto area alone. During the same period branch investigators have processed an additional 57 criminal fraud charges in areas outside of Metropolitan Toronto.

A "ghost car" program was initiated in 1978, when abuses in the transmission repair field were attacked. The success of that effort is well known and it dictated a need to continue the program. The logistics of "ghost" car shopping are difficult. Good private sector technical expertise is hard to find. Vehicle selection and facility for "rigging" must be secretive. Forensic photography is a must particularly if parts have been marked. The cost of "ghost" car shopping approximates $50,000 annually, which is funded on a special project basis as opposed to writing the costs into our base budget. The program is normally operated between April and September although we have shopped during the winter months. Targeting of repair outlets is

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effected through complaint monitoring and occasionally we are pro-active in specific areas such as Safety Standards Certificates. The program is worthwhile both as to results and prevention. The motor vehicle repair industry know we operate "ghost" cars and the notion that the next car into the shop could be one of ours must have a deterrent effect.

LEGISLATION REVIEW

Our own legislation and legislation from other jurisdictions is regularly reviewed and examined. An example of this is a recent amendment to the Motor Vehicle Dealers Act, which provides for a compensation fund. If a consumer obtained judgement against a motor vehicle dealer in a repair transaction, the consumer could have access to the compensation fund. Another example is the current drafting of a possessory and non-possessory Bill to replace the Mechanics Lien Act. Drafting is being carried out by lawyers from this Ministry and the Ministry of the Attorney General. We have recently completed a study of the U.S. Magnuson-Moss Warranty Act, upon which, many State "lemon laws" are designed. The "lemon law" refers only to new motor vehicles while under warranty. We will be making recommendations to the Minister on the subjects of "lemon law", used vehicle warranty, replacement parts warranty, repair disclosure and repair estimates. It would be improper for me to articulate recommendations in these areas prior to Ministerial assessment and Cabinet direction.

Copies of our legislation are enclosed and I trust the foregoing will assist efforts of the Legislation and Licencing Committee. I will be in attendance at your Sub-Committee meeting November 17, 1983 at 2:00 p.m. in Committee Room #3.

Yours very truly,

David Mitchell
Director

:be

(Enclosures)

cc: Ms. Eileen Berriman, Metropolitan Toronto
Clerk's Office
2nd Floor
City Hall
Toronto, Ontario M5H 2N1

Mr. Allan Bonner, Executive Assistant to the Mayor
Mayor's Office
North York City Hall
5100 Yonge Street
North York, Ontario M2N 5V7

Copy sent to : Ms. Eileen Berriman,
City Hall - Toronto

Ontario

Ministry of
Transportation and
Communications

East Building,
1201 Wilson Avenue,
Downsview, Ontario.
M3M 1J8.

(416)248-7154.

November 4, 1983.

Mr. Alan Bonner,
Executive Assistant to the Mayor,
City Hall,
5100 Yonge Street,
North York, Ontario.
M2N 5V7.

Dear Mr. Bonner:

This is further to the correspondence from his Worship Mayor Mel Lastman dated September 30, 1983 with respect to the business practices of the automobile repair industry.

Please find attached a summary of this Ministry's activities with respect to the inspection of motor vehicles.

This Ministry's Vehicle Inspection Program is governed by the Highway Traffic Act and Regulations.

The Act does not encompass any legislation of the consumer protection nature that speaks to the automotive repair industry. The Program is of a public protection nature and is designed to
ensure the safe operation of motor vehicles on Ontario highways.

When you have reviewed the material I have attached, please advise me if you require my services further.

Thank you for allowing me to assist you in this matter.

Sincerely,

W. Keen,
Director,
Compliance Branch.

cc: M.H. Larratt-Smith
H. Kivi

WK:jh

ONTARIO'S VEHICLE INSPECTION PROGRAMS

1) USED VEHICLES AT TIME OF RESALE

All used "motor" vehicles must undergo an inspection for a safety standards certificate which is required to effect the transfer of the motor vehicle at the time of resale.

Lacking sufficient hard data in support of periodic motor vehicle inspection (PMVI) as a means of reducing vehicle accidents, the Province of Ontario bases its SSC Program on the premise that the majority of motor vehicles are transferred on the basis of economics, ie. trade the vehicle rather than invest in extensive repairs.

These inspections must be performed at an approved "Motor Vehicle Inspection Station" and there are approximately 9500 of these stations in Ontario. There are a further 500 - 600 of these stations in the fleet category who certify (sticker) their own vehicles only. Some 20,000 provincially licensed mechanics are registered in the "Motor Vehicle Inspection Station" (MVIS) Program. A volume of 800,000 to 850,000 motor vehicles are inspected annually under this program prior to resale as used vehicles.

The inspection standards applicable are those listed as Schedule 1 and 2, pages 7 to 26. of Regulation 483.

2) DUMP VEHICLES

Ontario Regulation 483, Page 3, Part II, Section 5.
All dump type motor vehicles and tractors used for the transportation of the type of product listed in the definition Regulation 483, Page 1, Section 1(f) must undergo an inspection during the Spring and Fall of each year. The inspection standards and procedures laid down in Schedules 1 and 3, must be adhered to and when the vehicle passes the inspection, the appropriate sticker is affixed to the top centre of the windshield. This program results in the inspection of approximately 30,000 dump vehicles every Spring and a further 25,000 vehicles in the Fall. Approximately 9,500 dump type vehicles were inspected last year by Ministry Inspectors as part of the commercial vehicle inspection program.

3) SCHOOL PURPOSES VEHICLES, BUSES AND PHYSICALLY-DISABLED PASSENGER VEHICLES

Ontario Regulation 483, Pages 4 to 7, Sections 6, 7 and 8.

The definitions for the above mentioned vehicles can be found on Pages 1 and 2 of the regulation.

All of the vehicles listed require a safety inspection at least every 6 months and an internal brake inspection at least every 12 months. The safety inspection is performed as per Schedule 1 (in the case of school purpose vehicles, Schedule 4 must also be followed) and the internal brake inspection is performed under the requirements of Schedule 2.

There are 12/13.000 SPV's and 9/10,000 highway coaches, church buses, transit buses and physically-disabled passenger vehicles covered under this category of the Inspection Program.

4) SAFETY LANE - PERMANENT AND PORTABLE

The Province also operates two permanent safety lanes in Toronto on a year round basis, plus eleven portable safety lanes that operate from mid May to the end of August. These lanes, during the fiscal year 1982-83, inspected and rechecked a total of 65,893 automobiles and light trucks. The majority of the vehicles reporting for inspection have been directed to the lanes by a police authority which accounts for the fact that 8,122 vehicles of the 53,213 that underwent the intial inspection, lost their licence plates because of an unsafe condition. This represents a plate removal rate of 15%.

5) COMMERCIAL VEHICLE INSPECTION

During the same period, 1982/83, there were 52,969 heavy commercial vehicles inspected. A total of 41,132 of these vehicles were inspected at roadside locations and the remaining 11,837 were inspected in the operator's terminals.

When inspecting any of the vehicles, cars, trucks or buses, our inspectors follow the applicable criteria in Schedules 1 to 6 found in Regulation 483.

6) CONSUMER PROTECTION

Part of the mandate of the Ministry of Transportation and Communications is to ensure that vehicles using the province's highways are maintained in a safe condition and the various sections of the Highway Traffic Act and its regulations are designed to accomplish this end. The Act does not encompass any legislation of a consumer protection nature that speaks to the automotive repair industry. The Safety Standards Certification program by its very nature affords some degree of consumer protection to the purchaser of a used car but this is incidental to the program and not as a result of the legislation.

Address all correspondence to the Chief of Police

Metropolitan Toronto Police

JOHN W. ACKROYD, *Chief of Police*

590 Jarvis Street
Toronto, Ontario
Canada. M4Y 2J5

(416) 967-2222.

Please reply attention of

File No. 19316

October 18, 1983

His Worship
Mayor Mel Lastman
City of North York
3100 Yonge Street
North York, Ontario
M2N 5V7

Dear Sir

RE: Motor Vehicle Sale and Repair

I am directed by the Chief of Police to reply to your letter of September 30, 1983, and forward to you analysis pertaining to the above captioned subject.

On behalf of the Metropolitan Toronto Police Force, I will be attending your sub-committee meeting tentatively set for November 17, 1983. Would you please advise us as to the time and location when confirmed.

Yours truly

John Getty
Staff Inspector
Auto Squad

Encl
JG/vl

c.c. Ms. Eileen Berriman ✓
Metro Toronto Clerk's Office

Mr. Allan Bonner
Executive Assistant to the Mayor

METROPOLITAN TORONTO POLICE

CONSUMER COMPLAINTS

RE

MOTOR VEHICLE SALE AND REPAIR

PRESENT POLICY RE CONSUMER COMPLAINTS

The Metropolitan Toronto Police Auto Squad investigates criminal matters relating to the sale and repair of motor vehicles.

For several years four officers from the Auto Squad have worked directly with the Investigation Branch of the Ministry of Consumers and Commercial Relations.

The consumer complaints are received by the Ministry of Consumers and Commercial Relations, reviewed, and if the matter is found to be a criminal nature, it is investigated by the Police. The other complaints are investigated by Ministry Investigators for offences under the following Provincial Statutes:

THE CONSUMERS PROTECTION ACT
THE BUSINESS PRACTICES ACT
THE MOTOR VEHICLE DEALERS ACT

Since January 1, 1982, Police Officers working on consumer complaints received by the Ministry of Consumers and Commercial Relations has resulted in three hundred and eight (308) criminal Fraud charges being laid against forty-one (41) motor vehicle business premises or their employees.

In addition, consumer complaints that were recieved by the Metropolitan Toronto Police Auto Squad, resulted in sixty (60) charges of criminal Fraud being laid against thirty-eight motor vehicle business premises during 1982 and 1983.

A total of 368 Fraud charges have been laid as a result of consumer complaints since January 1982. The charges have been laid against the following areas of the Motor Vehicle Service Industry:

NEW CAR DEALERS
USED CAR DEALERS
MECHANICAL REPAIR GARAGES
BODY REPAIR GARAGES

The success of the joint investigations conducted by the Metropolitan Toronto Police and the Ministry of Consumers and Commercial Relations has had a noticeable effect in reducing the disreputable practices conducted by some persons in the motor vehicle service industry.

Good co-operation is enjoyed between the Metropolitan Toronto Police and the Metropolitan Licensing Commission. A free flow of information is available regarding Licensed Motor Vehicle Business premises. Periodically, investigators from the Licensing Commission meet with Police Officers of the Auto Squad to discuss matters of mutual interest.

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PUBLIC EDUCATION

There appears to be a lack of knowledge by the general public which avenue to pursue if they are defrauded or cheated as a result of a motor vehicle sale or repair.

More publicity and public education by the different levels of Government may be required to inform the public that consumer complaints are investigated by;

The Ministry of Consumers and Commercial Relation,
The Police, and
Other Government Agencies.

NEW LEGISLATION

The fact that 368 Criminal Fraud charges were laid against businesses and persons engaged in the sale and repair of motor vehicles, indicates a possible need for new legislation for consumer protection.

The Province of Quebec and sixteen of the United States have statutes to protect the consumer in the area of motor vehicle purchase and repair. This protection could be enacted in the Province of Ontario by amending the present Consumers Protection Act to include:

1. NEW CAR REPLACEMENT PROTECTION (Lemon Law)

   Vehicle to be replaced by manufacturer or dealer if major problems cannot be resolved during warranty period.

2. USED CAR WARRANTY PROTECTION

   Provide written warranty, stating details and period of warranty, and replacement vehicle if major problems cannot be resolved during warranty period.

3. VEHICLE REPAIR PROTECTION

   Provide a written estimate;
   Provide detail invoice for repair work done;
   Return all original parts that were replaced to the customer;
   Guarantee repair work for specified time period.

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This form of legislation would protect the consumer and should not be a subject of a Metropolitan Toronto By-Law, but should be enacted as a Provincial Statute to afford the protection to all citizens in the Province of Ontario.

Transport Canada Transports Canada

Surface Surface

Your file Votre référence

Our file Notre référence
S1558-1(TSPE/X)

OTTAWA, Ontario,
K1A 0N5,
October 20, 1983.

Mr. Allan Bonner,
Executive Assistant to
the Mayor,
Mayor's Office, City Hall,
North York, Ontario.
M2N 5V7

Ms. Eileen Berriman,
Metropolitan Toronto
Clerk's Office,
2nd Floor, City Hall,
Toronto, Ontario.
M5H 2N1

Dear Mr. Bonner / Ms. Berriman:

Further to Mr. Lastman's letter of September 29, 1983, regarding federal legislation governing mechanical problems in new automobiles, we are pleased to provide the following information. The federal government, through Transport Canada, has the responsibility for establishing and enforcing safety standards for new and imported motor vehicles and tires. Provincial authorities are responsible for the operational safety of vehicles in use (e.g. licensing and vehicle inspections).

Legislation governing the federal role in motor vehicle safety consists of the Motor Vehicle Safety Act (1970), amendments to the Act (1977) and the Motor Vehicle Tire Safety Act (1976), attached. We have also included a copy of the Regulations pursuant to these Acts.

In Canada, there is a self-certification system whereby the manufacturer certifies that his vehicle meets all of the required safety standards, and he is thus permitted to affix a National Safety Mark to the vehicle prior to its sale. At present, there are approximately 1,200 manufacturers of all types of vehicles falling under these regulations. The Safety Acts apply only to those manufacturers engaged in interprovincial trade. Most provinces call up the Canadian standards

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in their Highway Traffic Acts as a condition for licensing, and thus most of the vehicles sold for intra-provincial use also meet equivalent standards.

To ensure manufacturers comply with the regulations, Transport Canada has a program of compliance testing and inspection. Vehicles and components are sampled from the production lines and are tested against the required standards. Where failures occur, manufacturers recall the non-complying items. Also, Transport Canada inspectors visit the smaller manufacturers to offer advice and assistance in meeting the standards.

We should also like to draw your attention to Section 8 of the Acts. Under this provision, a company is required to determine if a defect exists that may affect the safe operation of the vehicle, and to notify both the Minister of Transport and the owner of the vehicle about the defect, its possible affects, and what actions to take to correct it. The Minister of Transport is required by law to notify his provincial counterparts as soon as he is aware of the problem. While not required by law, current practice is for the company to recall the affected vehicles, and to correct the problem at no cost to the owner.

To ensure that companies respect these provisions, Transport Canada maintains a system of accepting complaints from the public alleging safety-related defects, investigating these complaints to establish the facts, and transmitting the information to the company for its determination. Should the company not acknowledge a defect when, in our belief, one exists, then provisions are in the Acts to prosecute the company.

Over the past 10 years, over 8 million vehicles have been recalled in Canada for the correction of safety problems.

In addition to these activities centered in Ottawa, Transport Canada maintains under contract with the University of Toronto and the University of Western Ontario accident research teams which investigate on-road performance of the safety features of motor vehicles in order to monitor the adequacy of current regulations. These teams also assist local agencies in specialized investigations of defects or other safety problems (school bus accidents, accidents involving propane or CNG powered vehicles, fatal or serious injury accidents involving restrained occupants).

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I have taken the liberty of sending you copies of our annual report detailing our program, as well as some other publications providing specifics of certain of our activities. Should you have any questions regarding this, or any other aspect of our program, please do not hesitate to call me at 992-1471.

Yours truly,

T. M. Burtch, P. Eng.,
Chief,
Planning Program Evaluation,
Road Safety and Motor Vehicle Regulation.

BRIEF SUBMITTED TO THE
SUB-COMMITTEE OF THE LEGISLATION AND LICENSING COMMITTEE
OF THE MUNICIPALITY OF METROPOLITAN TORONTO
BY
CONSUMER AND CORPORATE AFFAIRS CANADA
TORONTO, ONTARIO
NOVEMBER 17, 1983

Introduction

The purpose of this submission on behalf of the Department of Consumer and Corporate Affairs is to assist the sub-committee of the Legislation and Licensing Committee of the Municipality of Metropolitan Toronto in its consideration of the business practices of the automobile repair industry.

* * * * * * * *

The Federal Government of Canada does not have the legislative responsibility for matters relating to:

- contractual obligations incurred in the sale and purchase of new or old automobiles;
- the durability of automobiles;
- the licensing of automobile dealers whether of old or new vehicles;
- the automobile repair industry and its practices.

These issues are all within the jurisdiction of the provinces of Canada.

The major federal responsibility is related to the safety of new motor vehicles and is administered by Transport Canada. These responsibilities cover:

- Investigations of defects in the construction, design or function of motor vehicles or their components that may affect the safe operation of a motor vehicle. These investigations are conducted by the Road Safety Branch.
- A Motor Vehicles Recall Register that lists motor vehicle recalls involving safety-related defects or non-compliance with Canadian motor vehicle safety standards.
- Fire defects that may affect the safe operation of a motor vehicle and are investigated by the Road Safety Branch.
- A Fire Recall Register that lists motor vehicle tire recall campaigns for safety-related defects.
- Motor vehicles/safety regulations that apply to vehicles manufactured and imported into Canada.

Inquiries into these areas or further information can be obtained by telephoning the Department of Transport in Ottawa at (613) 992-2236.

The federal Department of Consumer and Corporate Affairs administers the Weights and Measures Act. Under section 27 it is a criminal offence to tamper with odometers. Proposed amendments to the Criminal Code (Part VIII, section 209) would also amend section 27 of the Weights and Measures Act.The proposed amendments would ensure that when an odometer is replaced, (1) the replacement was necessary

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because the odometer was defective, and (2) that the replacement odometer is set to the total distance travelled by the vehicle.

There is no legislation with respect to motor vehicle surface corrosion. A voluntary anti-corrosion code jointly monitored by the federal and provincial governments ensures that some surface corrosion protection is built into new vehicles.

The Department of Consumer and Corporate Affairs conducts research in a wide variety of fields. These projects are funded to encourage outside research with relevance to policy formulation.

In 1983 a study by Professor Stephen E. Margolis dealing with Consumer Problems in the Automobile Repair Industry was published. It is included for consideration.

The Margolis study provides a conceptual framework for analysing the economic interaction between the automobile repair firm and the consumer, which emphasizes the informational (i.e. technical knowledge) aspect of the service supplied by the repair firm. It is important to recognize that the repair involves not only effecting the necessary remedial measure but also diagnosis of the precise nature of the problem. Furthermore, it is difficult for the consumer to ascertain what work was, in fact, done, or to determine whether a less costly repair would have sufficed. In this

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situation, the consumer naturally tends to regard the repair firm with suspicion and there is potential for misunderstandings and even fraud. An examination in the Margolis study of Canadian consumer expenditures on automobiles suggests that actual expenditures quite closely approximate the level of expenditure required to maintain automobiles. Margolis also documents relevant provincial legislation and regulations.

While the analysis and conclusion of this study do not necessarily reflect the views of the Department, the findings may be of interest to the sub-committee. We would particularly suggest Appendix A -- Provincial Laws pertaining to Automobile repair, and Chapter V -- Policy Implications and Recommendations for future research.

The Municipality of
Metropolitan Toronto

Metropolitan Legal Department
City Hall, West Tower, 13th Floor
Toronto, Ontario, Canada M5H 2N1
Telephone: (416) 367-

*In Reply Refer to
File No*

Date November 14, 1983

TO THE SUB-COMMITTEE OF THE
LEGISLATION AND LICENSING COMMITTEE

RE: THE REGULATION OF THE AUTOMOBILE REPAIR INDUSTRY

The Legislation and Licensing Committee at its meeting held on September 13th, 1983, directed that your Sub-committee be established to consider the following matters, and to submit a report thereon:

1. review of existing legislation enacted in Canada and the U.S.A. to protect citizens with respect to mechanical problems in new automobiles to determine whether or not there is a need for similar legislation in the Province of Ontario to protect the citizens of the Metropolitan Toronto area;
2. review of existing legislation covering the automobile repair industry, in the Province of Ontario and the Metropolitan Toronto area, and the responsibilities of Provincial Ministries for the enforcement of such legislation; and to determine whether or not the Metropolitan Toronto Council, through the Metropolitan Licensing Commission or the Legislation and Licensing Committee, has sufficient power to address any problems which may exist in this area; and
3. meet with appropriate officials of the Federal Government to establish whether or not the regulation of new automobiles and the automobile repair industry is under their jurisdiction; whether there is federal legislation covering this area; and, if so, the ministries responsible for the enforcement of such legislation.

The Chairman of your Sub-committee has asked me to report on items 1 and 2 above and, in addition, to review the following items:

1. By-law No. 107-78 as it concerns the regulation of the automobile repair industry;
2. the efficacy of "show cause" hearings;
3. the impact of the Mechanics' Lien Act;
4. the possible implementation of an "auto watch dog".

The following materials were obtained by the Metropolitan Clerk, and were referred to in prepairing this report:

1. A copy of The Quebec Consumer Protection Act, Statutes of Quebec, 1978, chapter 9; obtained from the Province of Quebec Consumer Protection Office;

2. A copy of State of California Assembly Bill No. 1787 (The "Lemon Law") amending section 1793.2 of the California Civil Code, enacted June 24th, 1982; from the Bureau of Automobile Repair, Department of Consumer Affairs;

3. A copy of the Report of the State of New York Legislative Commission on Expenditure Review: Program Audit: Regulation of Automotive Repair Shops (The Commission is a permanent legislative agency to determine whether a government department or agency has effectively expended funds appropriated by the Legislature for specific programs).

I. Legislation Related to New Automobiles

A. Federal Legislation

The Motor Vehicle Safety Act, R.S. 1970, chapter 26 (1st Supp) as amended, provides for the establishment of safety standards for automobiles imported into Canada or sent from one province to another. These standards as set out in section 2 of the act may relate to the design, construction or functioning of motor vehicles and their components for the purpose of protecting persons against personal injury, impairment of health or death. Where a defect in the construction, design or functioning of an automobile is present, the manufacturer, distributor or importer must notify the current owner of that vehicle, advising the said owner of the nature of the defect, an evaluation of the safety risk related thereto and stating the steps to be taken to correct it. Failure to give notice of a defect referred to above, is deemed an offence under the Act with individuals subject to a fine or imprisonment, or both; and corporations subject to a fine up to a maximum of $100,000.

B. Province of Quebec

The Consumer Protection Act, in sections 151 and 153, provides that in the case of repairs under a conventional warranty:

1. the seller or the manufacturer is responsible for the reasonable costs of towing or breakdown service for the automobile, whether the service is provided by the seller, manufacturer, or a third person; and,

2. the seller or the manufacturer shall repair the automobile and assume the cost thereof or permit the consumer to have a third person carry out the repairs with the costs assumed by the seller or manufacturer.

C. State of California

In 1982, the State of California enacted Assembly Bill No. 1787, amending the existing California warranty law, set out in section 1793.2 of the Civil Code, to add a new provision applicable only to warranted new motor vehicles (excluding motorcycles, motor homes, and off-road vehicles) whereby the rights and obligations of the parties involved in a purchase of a new automobile were incorporated into the existing warranty law.

Prior to the above-noted amendment, California law required a manufacturer either to replace goods or reimburse the buyer where it was unable to service or repair goods to conform to applicable express warranties after a reasonable number of attempts.

The amending legislation established an objective standard for defining what was "reasonable" on the part of the manufacturer to service or repair the defective automobile whereupon the buyer could either be reimbursed in an amount equal to the purchase price less the amount directly attributable to use by the buyer prior to the discovery of the defect or be provided with a replacement automobile.

The new law establishes a presumption that a reasonable number of attempts to rectify the defect have been undertaken if, within one year or 12,000 miles,

1. the same defect has been repaired four or more times by the manufacturer and the buyer, as required, has directly notified the manufacturer of the need for repair of the defect (the notice requirement is applicable only if the manufacturer has clearly disclosed to the buyer the provisions of the California Lemon Law); or

2. the vehicle is out of service due to repair of defects by the manufacturer for a total of more than 30 calendar days since delivery of the vehicle to the buyer.

The legislation requires a buyer to first resort to a third-party dispute resolution program, if one exists, before he can rely on the presumptions in the law as to what constitutes reasonable attempts by the manufacturer to rectify a defect in the automobile, and subsequent replacement of the vehicle or reimbursement to the buyer.

A manufacturer would be bound by a decision of the third party process if the buyer elects to accept it. The buyer may rely on the Lemon Law presumption in an action to enforce his rights against the manufacturer, as established by this statute, to reimbursement or to replacement of the automobile.

Neither the Province of Ontario nor the Government of Canada has enacted legislation similar to the State of California "Lemon Law".

II. Regulation of Automobile Repair Shops - Out of Ontario

A. State of New York

The State of New York enacted the Motor Vehicle Repair Shop Registration Act in 1974, as a new provision in its Vehicle and Traffic Law statute whereby all motor vehicle repair shops are required to be registered with and licensed by the Department of Motor Vehicles.

Article 12-A of the Motor Vehicle Repair Shop Registration Act defines the purpose of the legislation as follows:

> "To further highway safety by promoting the proper and efficient repair of malfunctioning or disabled motor vehicles and to protect consumers . . . from dishonest, deceptive and fraudulent practices in the repair of such motor vehicles."

Although motor vehicle repair shops are licensed by the state, automobile mechanics are not so licensed.

The motor vehicle repair shops are regulated by the following means:

1. Full disclosure to the consumer is required, in order that the customer may have full and accurate information on work performed on his automobile.

   The repair shop is required to:

   (a) provide a written estimate regarding parts and labour for a specific job, if requested by the customer;

   (b) a reasonable fee may be charged for the estimate;

   (c) the final bill for work done may not exceed the estimate without the consumer's consent;

   (d) all work performed and parts supplied must be recorded on an invoice, with the consumer receiving a copy thereof;

(e) no work may be performed unless authorized by a work order;

(f) to return replaced parts to the customer if a timely written demand is made.

ii. Registration

The state of New York has enacted a system of licensing and registration of all motor vehicle repair shops in order to maintain effective supervision and regulation of this business .

iii. Investigation and Civil Penalties

The Vehicle and Traffic Law authorizes the Commissioner of the Department of Motor Vehicles to investigate complaints from consumers with respect to repair work performed by an automobile repair shop on his motor vehicle. The Commissioner is also authorized to:

1. assist in the settlement of disputes;
2. to suspend or revoke a repair shop's registration;
3. assess a civil penalty;
4. make a finding of financial loss to the complainant under specified circumstances and ordering restitution to a complainant where appropriate.

iv. Limits on Jurisdiction of Department of Motor Vehicles

Complaints are only accepted up to 90 days or 3,000 miles after completion of repairs — whichever comes first. The statute does not authorize the Department of Motor Vehicles to deal with:

1. complaints related to warranties;
2. complaints of inconveniences or discourteous behaviour;
3. complaints to the vehicle unrelated to the repair.

In carrying out its investigative and regulatory duties, The Department of Motor Vehicles conducts undercover investigations of repair shops suspected or routinely engaging in unacceptable repair shop practices or at shops with a history of consumer complaints.

B. State of California

The State of California legislation regulating automobile repair shops is not available. The State of California Department of Consumer Affairs forwarded a copy of Assembly Bill No. 1787, the Auto Lemon Bill, to the Metropolitan Clerk, but not extracts from State legislation regulating automobile repair shops.

It appears from information available in the materials forwarded to the Metropolitan Clerk from the State of New York that automobile repair shops are licenced by the State of California. Proceedings to determine if a licence is to be denied, revoked or suspended are the responsibility fo the State Attorney General who may commence a proceeding to inquire into the matter. Other remedies available to the Attorney General are civil or criminal proceedings, where appropriate.

As in New York, the state does not require the licencing of automobile mechanics. The California Auto Repair Bureau. responsible for the regulation and supervision of automobile repair shops, has established an undercover investigative program to assist in the enforcement of the State licensing program.

The program involves a shop supervisor, a mechanic and a fleet of 13 -16 cars and a truck to transport the undercover vehicles. A specially prepared automobile is driven to a motor vehicle repair shop for repairs. It is subsequently checked for theft of parts or fraud. If a violation of state law is detected, civil or criminal charges may be brought against the automobile repair shop in question.

C. Province of Quebec

The Province has adopted the Consumer Protection Act, S.Q. 1978, chapter 9, to regulate, inter alia, automobiler repair shops.

Full disclosure as between the automobile repair shop and the consumer is required prior to performing the work, including:

1. a written estimate provided to the customer binding on the repair shop unless a written waiver from the consumer is secured;

2. a merchant may not charge for making an estimate unless the consumer is advised prior to it being made;

3. if, to make an estimate, an automobile or part thereof is disassembled, the cost of an estimate made to the consumer must include the cost of re-assembly, where the consumer does not have the work done;

4. the estimate is required to specify:

    (a) the name and address of the parties;

    (b) full identivication of the automobile;

    (c) the nature and total price of repairs;

    (d) fully identifying parts to be installed;

    (e) the period of time wherein the estimate is valid.

Section 171 of the Consumer Protection Act provides that the estimate is binding on the automobile repair shop upon acceptance by the consumer.

Section 172 prohibits the automobile repair shop from carrying out any repairs not included in the accepted estimate unless express authorization is obtained from the consumer.

Upon completion of the work, the consumer must be provided with a bill specifying:

1. the names of the parties;

2. full identification of the automobile;

3. the repairs carried out;

4. the parts used, whether it was new, used, or reconditioned and the price;

5. number of hours billed, hourly rate and total dost of labour;

6. total cost of repairs.

in accordance with section 173.

The repair shop is required to provide the replaced parts to the consumer , if the consumer requests it when requesting the repairs, but not where the repairs are done gratis, or the part is exchanged for a reconditioned part or the replaced part is subject to a warranty and the part is returned to the manufacturer or to the distributor.

The Consumer Protection Act, in section 176, implies a three month or 5,000 kilometre guarantee on all repairs. An action based on the warranty created by section 176, must be commenced within three months from the discovery of the defect, as set out in section 275 of the Act.

Section 178 provides that acceptance of an estimate or payment by the consumer does not disentitle him from taking action against the automobile repair shop due to:

1. absence of prior authorization for repairs;
2. poor work;
3. the actual cost exceeding the written estimate or the total of the price in the estimate and the price agreed on when the change was authorized.

Upon completion of the repair work, the automobile repair shop may retain possession of the consumer's automobile except where:

1. the merchant failed to provide a written estimate;
2. the total price of repairs exceeds the estimate, provided the owner pays the amount set out in the estimate;
3. the total price exceeds the written estimate and the additional amount subsequently agreed to, provided the agreed on price is paid.

III. Regulation of Automobile Repair Shops — Ontario

A. Province of Ontario

The Business Practices Act, R.S.O. 1980, chapter 55, as amended, regulates, inter alia, the automobile repair industry. The Ministry of Consumer and Commercial Relations is responsible for the administration of the Act. No person may engage in an unfair practice, which is deemed to include:

1. a representation made to a consumer that a service, part, replacement or repair is needed, if it is not;
2. a representation that the goods or services or any part thereof are available to the consumer when the person making the representation knows or ought to know they will not be supplied;

3. a representation that the goods are of a particular standard, quality, grade, style or model, if they are not;

4. a representation that the goods are new, or unused, if they are not or are reconditioned or reclaimed.

Any person who engages in an unfair practice, as referred to above, knowing it to be an unfair practice, is subject to prosecution and on conviction, liable to a fine of not more than $2,000 or to imprisonment for a term of not more than one year, or to both.

Where a corporation is convicted of knowingly engaging in an unfair practice, the maximum penalty is $25,000. Each director of the corporation and each officer, servant or agent responsible for the conduct of the corporation that gave rise to the offence is a party to the offence, and subject to the same sanctions as persons contravening the Act, unless he satisfies a court that he did not authorize, permit or acquiesce in the offence.

An order to cease an unfair practice may be made by the Director of the Consumer Protection Division the the Ministry of Consumer and Commercial Relations where he believes, on reasonable and probable grounds that a person is engaging in an unfair practice. The legislation requires notice to be given to an affected party with respect to the proposed order and further, provides him with the right to a hearing before The Commercial Registration Appeal Tribunal with respect to the proposed order of the Director.

The Act further provides that a person who is subject to an order to cease an unfair practice may enter into a written undertaking of voluntary compliance.

i. Investigation

To investigate a contravention of the Business Practices Act, the Director may appoint an investigator, in accordance with section 11 thereof, with power to:

1. enter at any reasonable time the business premises of such person and examine books, papers and matters relevant to the investigation; and

2. inquire into the business affairs, management, and practices relevant to the investigation.

In carying out the investigation, the person making the investigation has the following powers:

1. to summon witnesses;

2. to subpoena all documents or other things relevant to his investigation.

The investigator may also obtain a search warrant to enter and search a premise for documents relevant to his envestigation, in accordance with section 11(4) of the Act.

The Director has the authority, if it is considered advisable for the protection of consumers of the person investigated, to order any person holding any assets or trust funds of a person being investigated for engaging in an unfair practice, to refrain from dealing with such assets or trust funds;

ii. Regulation of Automobile Mechanics

A person working in an automobile repair shop may not work or be employed as a motor vehicle mechanic, servicing, repairing, overhauling, diagnosing or inspecting motor vehicles, unless he holds a certificate of qualification issued by the Director of Apprenticeship in accordance with the provisions of the Apprenticeship and Tradesmen's Qualification Act, R.S.O. 1980, chapter 24, as amended.

The Act also provides that no person may employ a motor vehicle mechanic unless he is an apprentice or holds a subsisting certificate of qualification. The said certificate is valid for a two-year period.

The Director of Apprenticeship may refuse to renew, suspend, or revoke a certificate of qualification where:

1. the holder is on reasonable grounds believed not to be competent to perform work as a motor vheicle mechanic with reasonable skill;
2. the holder is convicted of an offence under the Act.

The Act makes it an offence to contravene any of its provisions, and upon conviction, a person is liable to a fine of not more than $1,000.

iii. Municipal Regulation of the Automobile Repair Industry

Paragraph 149 of section 210 of The Municipal Act, R.S.O. 1980, chapter 302, authorizes the Metropolitan Council to licence and regulate owners or operators of public garages, which are defined to include a building or place used as a motor vehicle repair shop.

Pursuant to the enabling legislation, the Metropolitan Council has enacted section 2(41) of Municipality of Metropolitan Toronto By-law No. 107-78, requiring the owner or operator of a public garage, defined by section 1 of By-law No. 107-78 to include a motor vehicle repair shop, to obtain a licence to carry on the said business in the Metropolitan Area.

Part 1 of Schedule 25 to By-law No. 107-78 sets out the regulations to which a holder of a public garage licence, operating as a motor vehicle repair shop, is subject. The regulations deal with the following matters:

1. the period within which a trailer used for human habitation may be stored or parked at the said public garage;
2. removal of snow from the premises to an abutting sidewalk or roadway;
3. the provisions of adequate ventilation on the premises to disperse carbon monoxide fumes.

The Provincial enabling legislation does not authorize the regulation of the quality of work done by a licensed motor vehicle repair shop.

The person who holds a public garage licence in accordance with By-law No. 107-78 is, at all times, subject to a show cause hearing before the Metropolitan Licensing Commission where a number of complaints regarding its operations are received. At a show cause hearing, the onus rests on the licence holder to satisfy the Commission that the privilege of holding a public garage licence ought not to be revoked or suspended. The Commission at a show cause may also consider the character of the licence holder, and whether the carrying on of the business of automobile repair shop may in any way be adverse to the public interest.

The regulation of automobile repair shops may be augmented by including an amendment to Schedule 25, if your Sub-committee decides to make such recommendation:

1. to require a Schedule of rates and costs for services and parts to be either posted in a conspicious place in the licensed premises or to make a written list of the said rates available for review by a customer;
2. to require the owner or operator of the motor vehicle repair shop to provide an itemized bill, including reference to:
    - (a) the total number of hours required for repairs;
    - (b) identifying the parts used;
    - (c) total cost.

3. to require the owner or operator of a motor vehicle repair shop to maintain an itemized daily record of all work performed at his premises; showing the name and address of every customer, description of the motor vehicles repaired, the rates charged and the total charges collected;

4. the Metropolitan Licensing Commission or any person authorized by it shall at all times have access to such records to verify the same.

iv. Use of a "Ghost Car" System

There is no legal objection or impediment to the use of "ghost cars" to enable the Metropolitan Licensing Commission to investigate the owners or operators of motor vehicle repair shops.

v. Show Cause Hearings

Where a show cause hearing is held by the Metropolitan Licensing Commission to consider whether a licence ought to be issued, renewed, revoked or suspended, it is entitled to take into consideration the character of the applicant, whether the carrying on of the said business may result in a breach of the law, or may be in any way adverse to the public interest.

Where the Licensing Commission decides to refuse or to revoke a licence, the applicant or licence holder will be prohibited from carrying on that business in the Metropolitan area. Where a person fails to comply with a decision of the Licensing Commission, charges may be laid alleging a breach of By-law No. 107-78, resulting in a fine upon conviction.

If a person continues to contravene By-law No. 107-78, despite a conviction for breach thereof or a decision by the Licensing Commission to refuse or revoke a licence, the Metropolitan Corporation is entitled to commence injunction proceedings to obtain a Court order restraining further contravention of By-law No. 107-78.

It is submitted that a show cause hearing is an effective mechanism in regulating particular businesses, particularly in view of the ability of the Metropolitan Licensing Commission to quickly schedule a hearing.

vi. Appointment of an Auto Watch Dog

There is no legal impediment to the appointment of a person employed by or reporting to the Metropolitan Licensing Commission who would specialize in the regulation and inspection of motor vehicle repair shops.

vi. Mechanics' Lien Act

My report (August 10th, 1983) to the Legislation and Licensing Committee, advised that the motion adopted by the Metropolitan Council whereby the Province of Ontario was requested to amend the Mechanics' Lien Act to provide greater protection to the consumer requiring, inter alia, automobile repairs is still being actively studied by provincial officials with a view to proposing changes in provicial legislation regarding possessory liens under the Mechanics' Lien Act sometime in 1983.

CONCLUSION

The Metropolitan Council may only enact by-laws authorized by provincial enabling legislation. It is the Province of Ontario which has the jurisdiction to enact further remedial legislation affecting the automotive repair industry, if it is considered necessary and desirable by your Sub-committee to recommend to the Metropolitan Council that additional legislation be requested.

The foregoing is for the information of your Sub-committee.

A.P. G.Joy

A.P.G. Joy
Metropolitan Solicitor

AHC/nad

Enc.

CITY OF NORTH YORK

MEMORANDUM

October 14, 1983

TO: The Legislation & Licencing Sub-Committee

FROM: Mayor Mel Lastman

RE: NEED FOR PUBLIC HEARINGS

If the research and statistics available to me are any indication at all, we have a grave problem on our hands in Metropolitan Toronto. An automobile is the largest or second largest expenditure in many consumers' lives and they may be wasting their money on repairs.

In America, the National Highway Traffic Safety Administration estimates that $20 billion is wasted on poor, needless or fraudulent auto repairs and maintenance. In New York State alone, during 1980-1, 27.9 percent of registered auto repair shops had their registration suspended or revoked for such offenses. New York's "ghost car" program found that 74 cents of every repair dollar went for unsatisfactory repairs. The research showed that if a woman was driving the ghost car there was a greater chance of being ripped off. In California, the "ghost car" program uncovered illegal activities in 60 percent of its cases.

Consumers may not be aware of these statistics, but they are aware that they are at the mercy of repair shops, and they are scared. Automobile complaints are among the most frequent types of complaints received by consumer organizations. In the short time that this sub-committee has been in existence, my office has received letters and dozens of phone calls from worried consumers. They want to know what we are going to do for them.

Before we decide what we are going to do for them, we have to know what the problem is. Surely it is a consumer's right to travel on safe highways and roads which are free from wrecks and unsafe vehicles. Surely consumers are entitled to protection from dishonest, deceptive and fraudulent practices, and basic incompetence. Repair shops too, are entitled to protection against unwarranted complaints and harrassment.

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Great potential for abuse exists, and the problem is mainly one of expertise. We are all easy victims of incompetence and even rip-offs because today's automobiles are sophisticated beyond the average person's comprehension. Men are no better able to avoid being ripped-off than women are.

We have licenced mechanics in most garages, but I am told that often it is not the licenced mechanic working on your car, but an apprentice, or someone pumping gas as a part-time job. Even if a licenced mechanic is working on your car, how do you know if you need an ignition wire or a rebuilt engine?

Under present law, even if you know you have been unfairly dealt with, you have to pay for repairs before seeing your car. In some jurisdictions a customer can get his car back by paying the amount on a written estimate and settling the higher bill later. Customers don't have this protection in Ontario.

Large dealers, especially during hard economic times, dont's make much money on sales. They make their money on service.

I am told that a service advisor who takes down customer work orders are often paid on an incentive basis. They make extra money for suggesting that a car owner get more work done. This advisor is not a mechanic and customers rarely see mechanics in dealerships.

Traditional extras that may be suggested to car owners getting minor repairs are alignments (sometimes including ball joints and other steering parts, shocks, springs and perhaps tires), brakes and additional tune up items such as fan belts, filters, hoses, ignition parts and so on. It is hard for a consumer to know if he or she really needs all these extras.

Muffler shops are now selling brakes, shocks and springs. When a driver gets a new muffler and it is suggested he also needs brakes, shocks or springs, the customer does not have the expertise to know if he or she needs these extras. We must ensure that service stations, transmission, tune-up and other specialty shops are not doing unnecessary or sub-standard repairs.

Repair shops must know that Metropolitan Toronto is concerned about its citizens and wants to know how the repair business is working. Consumers must know that Metropolitan Toronto is concerned about their welfare. The ghost car system that has worked so well in New York, California and Ontario in the past may be the best way to ensure this.

I recommend that the next step of this sub-committee should be to place advertisements in the daily newspapers and ask for submissions from members of the public, mechanics, repair

.../3

shop owners, dealers and all others in the automotive field who share our concern for safety and equity. Let's examine the problem, and find a solution. From these public hearings we will gage the public's opinion for the need for such a ghost car system.

MDL/kll

Mel Lastman,
MAYOR

APPENDIX 11

MEETING No. 2 - JANUARY 26, 1984

THE PUBLIC
AND
REPRESENTATIVE JOHN J. WOODCOCK,
State of Connecticut

LIST OF PERSONS WHO MADE AN ORAL SUBMISSION

COPIES OF WRITTEN SUBMISSIONS

MEETING No. 2 - JANUARY 26, 1984

Representative John J. Woodcock, State of Connecticut, made a presentation to the Committee with respect to the "Lemon Law" which he introduced to the Connecticut General Assembly in January 1982, as well as Lemon Law II which he recently introduced to the General Assembly. Representative Woodcock advised that there is statistical data to support the fact that there are problems in the U.S. with new cars, and that ground swell support from the general public led to the enactment of the Lemon Law.

The following persons made an oral submission to the Committee:

Mr. Charles Chaplin
Mr. A.A. Horner
Mr. Eric Penney
Mr. John Rodgers, on behalf of Kathleen Ashton
Mrs. M. Day
Mr. Vito Mauro
Mr. Garth Holmes
Mr. Gus Brown
Ms. Sheila Clark
Mr. Lloyd George Winn
Miss Theresa Courneyea
Mr. J. Rosenberg
Mr. James Spagnola
Mr. Al Smith
Mr. Sam Gwartsman
Mr. Ian Smith

State of Connecticut
HOUSE OF REPRESENTATIVES
STATE CAPITOL
HARTFORD, CONN. 06106

REPRESENTATIVE JOHN J. WOODCOCK
ASSISTANT MAJORITY LEADER
FOURTEENTH DISTRICT

97 MURIELLE DRIVE
P.O. BOX 684
SOUTH WINDSOR, CONNECTICUT 06074

MEMBER
GENERAL LAW COMMITTEE
STATE CAPITOL TELEPHONE
[illegible]

STATEMENT OF REPRESENTATIVE
JOHN J. WOODCOCK
BEFORE METROPOLITAN TORONTO
AUTO WATCHDOG COMMITTEE

TORONTO, CANADA JANUARY 26, 1984

I AM MOST PLEASED TO BE WITH YOU THIS EVENING, TO DISCUSS THIS PROPOSED LEGISLATION, ITS ORIGIN, ITS WORKINGS AND ITS REASON FOR BEING.

OVER TWO AND ONE HALF YEARS AGO, I BEGAN WORKING ON WHAT IS NOW KNOWN AS THE CONNECTICUT LEMON LAW. IT WAS AN IDEA THAT WAS SPAWNED BY MY CONCERN THAT CONNECTICUT'S THEN LAW DID NOT AFFORD ADEQUATE LEGAL PROTECTION TO CONSUMERS WHO FOUND THEMSELVES WITH NEW CARS THAT DEFIED REPAIR. I HAD NEVER PERSONALLY OWNED A LEMON, BUT I KNEW PEOPLE WHO HAD--PEOPLE WHO HAD INVESTED GOOD MONEY ONLY TO FIND THEMSELVES SUDDENLY IMMERSED IN THE "WEAR DOWN PROCESS" WHICH ULTIMATELY RESULTED IN THEM THROWING IN THE TOWEL AFTER ABSORBING A FINANCIAL AND EMOTIONAL BEATING.

WE IN CONNECTICUT MADE CONSUMER HISTORY ON JUNE 4, 1982 WHEN GOVERNOR WILLIAM O'NEILL SIGNED INTO LAW THE NATION'S FIRST LEMON LAW. IT IS A REVOLUTIONARY MEASURE WHICH CHANGES THE BALANCE OF POWER, THE LEGAL BURDENS AND THE ECONOMICS OF THE COMPLEX CONSUMER-DEALER-MANUFACTURER RELATIONSHIP.

THE CONNECTICUT LEMON LAW HAS SENT SHOCK WAVES THROUGH THE AUTOMOBILE INDUSTRY FROM THE CORPORATE SKYSCRAPER DOWN TO THE ASSEMBLY LINE, TO THE AREA DEALERS. IT HAS GENERATED AN INTERNATIONAL DEBATE, DEALING WITH SUCH QUESTIONS AS "IS THIS LAW NECESSARY?" "WHAT HAPPENED IN THE INDUSTRY TO CAUSE SUCH AN EROSION IN CONSUMER CONFIDENCE?" AND "DO THE INDIVIDUAL STATES HAVE ADEQUATE AND EFFECTIVE REMEDIES AVAILABLE TO NEW CAR CONSUMERS WHO ARE FACED WITH HAVING A SUBSTANTIAL INVESTMENT TURN SOUR?"

IN JANUARY, 1982, I INTRODUCED THE LEMON LAW TO THE CONNECTICUT GENERAL ASSEMBLY. I DID SO WITH THE SOLE INTENTION OF CREATING A DIALOGUE AS TO WHETHER WE IN CONNECTICUT WERE PROVIDING ADEQUATE LEGAL PROTECTION TO OUR NEW CAR CONSUMER. I WAS CONVINCED AFTER EXTENSIVE RESEARCH, THAT WHAT WAS NEEDED WAS A LAW, A STANDARD, OR A PROGRAM, WHICH GAVE CONSUMERS AN EFFECTIVE, REASONABLE AND MEANINGFUL REMEDY WHICH WOULD BALANCE THE EQUITIES, WHICH WOULD REQUIRE THE PARTIES TO WORK TOGETHER, SO AS TO RESOLVE THE PROBLEMS AND ISSUES AS EXPEDITIOUSLY AS POSSIBLE.

UPON FILING THE LEGISLATION, I WAS MET WITH PREDICTABLE REACTION. THE PRESS FOUND IT AMUSING, THE LEGISLATIVE LEADERSHIP THOUGHT IT WAS ONE MORE IDEALISTIC FRESHMAN PROPOSAL, AND THE INDUSTRY SNICKERED. HOWEVER, THE CAR BUYING PUBLIC REACTED STRONGLY. I WAS DELUGED WITH LETTERS AND TELEPHONE CALLS FROM PEOPLE AROUND THE STATE. OVERWHELMING PUBLIC INTEREST AND OFFERS OF HELP ILLUSTRATED THAT THIS WAS A LARGER ISSUE THAN MERE DISCUSSION OF AFFORDING OUR NEW CAR BUYERS ADEQUATE LEGAL PROTECTION. IT WAS OBVIOUS THAT MANY PEOPLE HAD BEEN,AND WERE BEING, SUBJECTED TO THE "LEMON CAR SYNDROME", AND THAT THEY WERE MOST ANXIOUS TO SEE LEGISLATION ENACTED TO ADDRESS IT.

IN THE FOLLOWING WEEKS, I RECEIVED COUNTLESS DETAILED CASE HISTORIES FROM LEMON OWNERS. MANY CONSUMERS TOOK A DAY OFF FROM WORK AND TESTIFIED AT THE LEGISLATIVE PUBLIC HEARING, SHOCKING THE COMMITTEE MEMBERS WITH DETAILS OF THEIR PERSONAL "HORROR STORIES". THE AUTO INDUSTRY VIGOROUSLY PRESENTED ITS SIDE OF THE ISSUE. INTENSIVE

LOBBYING, THEREAFTER, BECAME THE ORDER OF THE DAY IN THE CONNECTICUT GENERAL ASSEMBLY. BUT TWO MONTHS LATER, ON APRIL 30, 1983, FINAL LEGISLATIVE APPROVAL WAS WON IN THE HOUSE OF REPRESENTATIVES AND THIS HISTORIC BILL WAS SENT TO THE GOVERNOR FOR HIS REVIEW AND SIGNATURE.

AS MENTIONED EARLIER, THE CONNECTICUT LEMON LAW IS A REVOLUTIONARY PIECE OF LEGISLATION THAT CONTAINS PRECEDENT SETTING LEGAL THEORIES THAT COMPLETELY CHANGED THE CONSUMER-DEALER-MANUFACTURER LEGAL RELATIONSHIP. IT SIGNIFICANTLY STRENGTHENS THE NEW CAR BUYER'S RIGHTS WHEN HE FINDS HIMSELF WITH A "LEMON" IN AT LEAST FOUR DISTINCT WAYS.

1. DIRECT LEGAL RECOURSE: THE LAW GIVES CONSUMERS DIRECT LEGAL RECOURSE AGAINST THE MANUFACTURER. IT REQUIRES THAT A MANUFACTURER OF A NEW PASSENGER CAR, VAN OR TRUCK, OR THE MANUFACTURER'S AGENT OR AUTHORIZED DEALER, REPAIR ALL DEFECTS COVERED BY A WRITTEN WARRANTY DURING THE WARRANTY PERIOD OR WITHIN ONE YEAR OF THE VEHICLE'S DELIVERY DATE, WHICHEVER OCCURS FIRST. IF THE MANUFACTURER OR ITS AGENT ARE UNABLE TO REPAIR DEFECTS WHICH SUBSTANTIALLY IMPAIR THE USE OR VALUE OF THE VEHICLE, AFTER A REASONABLE NUMBER OF REAPIR ATTEMPTS, THE MANUFACTURER IS THEN REQUIRED TO EITHER REPLACE THE VEHICLE OR REFUND THE FULL PURCHASE PRICE, INCLUDING COLLATERAL CHARGES, LESS A REASONABLE ALLOWANCE FOR THE CONSUMER'S USE.

2. LEMON DEFINED: THE LAW DEFINES A "LEMON" VEHICLE BY SPECIFYING THAT "A REASONABLE NUMBER OF ATTEMPTS" HAVE BEEN UNDERTAKEN WHEN (1) THE SAME SUBSTANTIAL PROBLEM HAS BEEN SERVICED OR REPAIRED FOR 4 OR MORE TIMES DURING THE WARRANTY PERIOD OR WITHIN ONE YEAR OF THE VEHICLE'S DELIVERY DATE, WHICHEVER IS EARLIER, OR (2) THE VEHICLE HAS BEEN OUT OF SERVICE FOR A CUMULATIVE TOTAL OF 30 CALENDAR DAYS FOR THE SAME PERIOD.

THIS IS THE FIRST TIME THAT ANY LEGISLATION, STATE OR FEDERAL, HAS SET A STANDARD FOR THE TERM "LEMON:. IF THE CONSUMER MEETS ONE OF THE TWO TESTS, THEN HE HAS A PRIMA FACIE CASE UNDER THE LAW AND HE WILL NO LONGER HAVE TO BRING HIS LEMON

BACK TIME AND TIME AGAIN FOR REPAIR EFFORTS.

THE "FOUR OR MORE STANDARD" APPLIES TO A SPECIFIC MAJOR PROBLEM WHICH IS OFTEN THE CASE WITH A LEMON; HOWEVER, SOME "LEMONS" HAVE A MYRIAD OF RESOLVABLE PROBLEMS WHICH ARE CUMULATIVE, AND IF THAT IS THE CASE, THE SECOND, "30 DAY STANDARD" BECOMES OPERATIVE.

3. BURDEN OF PROOF SHIFTED: IF THE CONSUMER MEETS EITHER TEST, A LEGAL PRESUMPTION IS CREATED AND THE BURDEN OF PROOF IS THEN SHIFTED TO THE MANUFACTURER TO SHOWN THE CAR IS NOT A "LEMON". THIS IS OBVIOUSLY A DIRECT CONTRAST TO THE UNIFORM COMMERCIAL CODE THEORY IN WHICH THE BURDEN OF PROOF IS ON THE CONSUMER. IT IS ALSO HELPFUL TO THE CONSUMER TO KNOW WHAT STANDARDS HE MUST MEET, UNLIKE THE SUBJECTIVE STANDARDS OF THE UNIFORM COMMERCIAL CODE. UNDERSTANDABLY, THE INDUSTRY HAS CRITICIZED THESE STANDARDS AS BEING TOO RIGID. CONSUMERS ARGUE OTHERWISE, KNOWING NOW WHAT THEY MUST DO TO MEET THEIR LEGAL BURDENS.

4. ARBITRATION: THE FOURTH REVOLUTIONARY COMPONENT OF CONNECTICUT'S LEMON LAW IS THE ARBITRATION PROVISION WHICH SIGNIFICANTLY STRENGTHENS THE CONSUMER'S LEGAL HAND.

THE LAW PROVIDES THAT IF A MANUFACTURER HAS VOLUNTARILY ESTABLISHED AN INFORMAL DISPUTE MECHANISM (I.E. NON BINDING ARBITRATION), WHICH COMPLIES IN ALL RESPECTS WITH TITLE XVI CODE OF FEDERAL REGULATIONS PART 703, THEN IN THAT EVENT, THE CONSUMER MUST THEN FIRST RESORT TO THE PROCEDURE BEFORE SEEKING FURTHER RELIEF UNDER THE LAW.

VERY BRIEFLY, THE HIGHLIGHTS OF THE 703 REGULATIONS ARE:

(1) THEY ESTABLISH REQUIREMENTS FOR CONSUMER NOTIFICATION CONCERNING THE AVAILABILITY OF THE ARBITRATION PROGRAM. NOTICE MUST BE IN THE OWNER'S MANUAL, ALL LITERATURE AND BROCHURES CONCERNING THE PRODUCT, THE VEHICLE WARRANTY, AND ON SIGNS AT THE CAR DEALERS. INFORMATION THAT MUST BE WRITTEN IN THE WARRANTY INCLUDES THE NAME OF THE ARBITRATION MECHANISM, ITS ADDRESS AND TELEPHONE NUMBER. IN ADDITION, THE

THE CONSUMER MUST RECEIVE NOTICE OF THE ABOVE AT THE TIME OF SALE, AS WELL AS WHENEVER A DISPUTE ARISES. (2) THE ARBITRATION MECHANISM MUST BE INSULATED FROM THE MANUFACTURER'S INFLUENCE, AND THE DECISION-MAKERS MUST NOT BE ASSOCIATED IN ANY WAY WITH A PARTY TO THE DISPUTES (3) THE ARBITRATION PROGRAM MUST BE FREE TO THE CONSUMERS. (4) THE DISPUTE MUST GENERALLY BE SETTLED WITHIN FORTY (40) DAYS. (5) THE ARBITRATION IS NON BINDING ON THE CONSUMER WHILE THE MANUFACTURER IS REQUIRED TO PERFORM OBLIGATIONS IN GOOD FAITH. (6) THE ARBITRATION MECHANISM MUST WHEN RENDERING A DECISION, INFORM THE CONSUMER THAT FURTHER LEGAL REMEDIES, SUCH AS A LAWSUIT ARE AVAILABLE AND THAT THE AWARD IS ADMISSIBLE AS EVIDENCE IN COURT.

THE INCLUSION OF THE ARBITRATION PROVISION IN THE "LEMON LAW" HAS GIVEN THE AUTOMOBILE INDUSTRY AN INCENTIVE TO IMPLEMENT THESE PROGRAMS. IN CONNECTICUT, THE RESPONSE HAS BEEN MIXED.

CHRYSLER, FORD, GENERAL MOTORS, NISSAN, PORSCHE/AUDI AND VOLKSWAGAN AND JAGUAR HAVE RESPONDED TO OUR LEMON LAW BY IMPLEMENTING ARBITRATION PROGRAMS.

I RECENTLY FILED LEMON LAW II WHICH ADDRESSES OUR FIFTEEN MONTHS EXPERIENCE AND INCLUDES SOME MODIFICATIONS AND IMPROVMENTS OF OTHER STATES, AND WHICH ALSO REPRESENTS THE INPUT OF OUR GOVERNMENT OFFICIALS, STATE AGENCIES, OUR CAR DEALERS AND MOST OF ALL THE CONSUMERS.

THE ORIGINAL LEMON LAW, LIKE ANY NEW CONCEPT, PROCESS OR IDEA, HAS HAD GROWING PAINS; AND IT IS ESSENTIALLY FROM THOSE GROWING PAINS, THAT I HAVE CALLED FOR THE ESTABLISHMENT OF A STATE RUN INDEPENDENT ARBITRATION PROCEDURE WHICH WILL HANDLE LEMON LAW CLAIMS FOR THOSE MANUFACTURERS WHO DO NOT HAVE PROGRAMS AND FOR THOSE MANUFACTURERS WHOSE PROGRAMS ARE NOT CERTIFIED BY THE ATTORNEY GENERAL AS BEING IN COMPLIANCE WITH THE LEMON LAW. THE THRUST OF THIS NEW ARBITRATION PROCESS IS TO PROVIDE EQUAL PROTECTION OF THE LAW TO ALL NEW CAR BUYERS. TO DATE, ONLY 7 OF THE 26 AUTO MANUFACTURERS WHO SELL CARS IN CONNECTICUT HAVE ARBITRATION PROGRAMS. WITH OUR COURT SYSTEM BOGGED DOWN WITH BACKLOGS OF 4-6 YEARS AND WITH THE COST OF LITIGATION

SKYROCKETING, IT IS INCUMBENT TO OFFER ALL CONSUMERS A PROCESS WITH WHICH TO RESOLVE AUTO WARRANTY PROBLEMS. IT IS ESSENTIAL THAT WE PROVIDE CONSUMERS WITH A COMPLAINT RESOLUTION MECHANISM THAT WILL PROMPTLY, OBJECTIVELY AND IMPARTIALLY APPLY THE LAWS OF OUR STATE TO THE CASES BEFORE IT. THE COURTS CANNOT DO THIS, AND WE HAVE FOUND, THROUGH COMPLAINTS FROM THE PUBLIC AND THE FINDINGS OF THE ATTORNEY GENERAL, THAT THE INDUSTRY IS NOT DOING IT.

THE ARBITRATION PROCESS THAT IS NOW BEING CONSIDERED IS A TOTALLY INTEGRATED AND CO-ORDINATED APPROACH TO THE ABUSES AND PROBLEMS THAT WE HAVE EXPERIENCED IN CONNECTICUT OVER THE LAST 15 MONTHS AND INVOLVES THE OFFICES OF OUR STATE AGENCIES IN A MONITORING AND CERTIFICATION CAPACITY. IT DOES NOT DO DAMAGE TO THE EXISTING INDUSTRY PROGRAMS PROVIDED THEY RECEIVE CERTIFICATION FROM THE ATTORNEY GENERAL. IT AFFORDS CONSUMERS AN APPELLATE PROCESS WHERE INDUSTRY PROGRAMS HAVE ENGAGED IN SPECIFIED VIOLATIVE PRACTICES. BASICALLY, IT FILLS A HUGE VOID BY GIVING EVERYONE ARBITRATION RIGHTS AND SECONDLY, INSURING THAT INDUSTRY PROGRAMS ARE LEGITIMATE AND LAW-COMPLYING THROUGH STATE OVERSIGHT, MONITORING AND CERTIFICATION.

IN ADDITION TO THE STATE ARBITRATION COMPONENT, THE LEMON LAW II REVISIONS CALLS FOR THE EXPANSION OF THE LEMON LAW COVERAGE, WHICH WOULD BE IDENTICAL TO NEW YORK'S LAW AND THE BILL PENDING IN CONGRESS. IT WILL NOW INCLUDE SAFETY DEFECTS ALONG WITH DEFECTS CONCERNING THE CAR'S USE AND VALUE. IT CLEARLY SPELLS OUT WHAT ITEMS ARE REIMBURSABLE AND INCLUDES WITH IT THE RECOUPMENT OF FINANCE CHARGES, LOANER FEES AND TOWING EXPENSES. IT ADDRESSES THE ISSUE OF WHAT HAPPENS TO A RETURNED "LEMON." IT DEFINES WHAT IS A REASONABLE ALLOWANCE FOR USE AND MAKES ANY VIOLATION OF THE LEMON LAW A VIOLATION OF OUR STATE'S UNFAIR TRADE PRACTICE ACT.

LEMON VEHICLES ARE NOT UNIQUE TO CONNECTICUT. THE UNITED STATES GOVERNMENT HAS FOUND THAT CONSUMER COMPLAINTS ABOUT AUTOMOBILE DEALERS AND CARS JUMPED FROM FIFTH (5th) TO FIRST (1st) PLACE.

IN FACT, THE PROBLEMS WITH THE PURCHASE AND REPAIR OF AUTOMOBILES REPRESENT THE NUMBER ONE COMPLAINT ACROSS THE COUNTRY ACCORDING TO THE WHITE HOUSE OFFICE OF CONSUMER AFFAIRS, THE LEW HARRIS POLL AND THE UNITED STATES COUNCIL OF BETTER BUSINESS BUREAUS.

TO SAY THAT CONNECTICUT'S LEMON LAW HAS ATTRACTED THE ATTENTION OF OTHER STATES IS AN UNDERSTATEMENT. TO DATE, NINETEEN STATES HAVE FOLLOWED OUR EXAMPLE WITH SOME TWENTY PLUS OTHERS PRESENTLY CONSIDERING "LEMON" MEASURES, WITH MORE TO COME THIS YEAR. THERE IS A LEMON LAW PROPOSAL PENDING IN OUR CONGRESS.

CONNECTICUT BECAUSE IT WAS THE FIRST, CONTINUES TO BE THE CENTER OF SCRUTINY. INQUIRIES ARE STREAMING IN, SEEKING TO DETERMINE WHETHER AND HOW THE LAW IS, OR IS NOT WORKING. IN THE FIFTEEN MONTHS SINCE ITS ENACTMENT, CASES HAVE BEEN FILED BOTH IN THE COURTS AND AT THE ARBITRATION LEVEL. IT IS ESTIMATED THAT AT LEAST FIFTY CARS HAVE BEEN REPLACED SINCE OCTOBER 1, 1982, AND THAT IS ONLY THE TIP OF THE ICEBERG. THE TRUE MEASURE OF THE LAW'S SUCCESS LIES MORE IN THE AUTOMOBILE INDUSTRY'S HEIGHTENED AWARENESS OF WHAT IT MUST DO TO REGAIN AND RETAIN CONSUMER CONFIDENCE IN ITS PRODUCTS, AND TO SEE THAT CUSTOMERS GET FAIR AND SWIFT SOLUTIONS WHEN THEY ENCOUNTER NEW CAR PROBLEMS.

EVEN THOUGH IT POTENTIALLY BENEFITS AUTOMAKERS IN THE MARKETPLACE AND ENHANCES THEIR COMPETITIVE POSITION, THAT DOES NOT MEAN THE MANUFACTURERS ARE ISSUING RINGING ENDORSEMENT OF THE "LEMON LAW". TOO MANY CONTINUE TO OPPOSE OR UNDERMINE IT AT EVERY TURN, FREQUENTLY AIDED BY GROUPS SUCH AS THE BETTER BUSINESS BUREAU AND THE AMERICAN AUTOMOBILE ASSOCIATION. HOWEVER, DEALER ORGANIZATIONS FROM STATES SUCH AS MAINE, MASSACHUSETTS AND NEW JERSEY HAVE PUBLICLY ENDORSED THE LAW BECAUSE IT PUTS THE BURDEN OF RESPONSIBILITY FOR A "LEMON" WHERE IT BELONGS--ON THE MANUFACTURER. AS PROOF, OUR CAR DEALERS IN CONNECTICUT REPORT NEW INTEREST AND MORE ASSISTANCE FROM THEIR MANUFACTURERS IN WORKING OUT NEW CAR WARRANTY PROBLEMS.

THE CONNECTICUT LEMON LAW IS SYMPTOMATIC OF A GREATER NATIONAL PROBLEM, THAT IS, A TROUBLED INDUSTRY AND A WARY PUBLIC. IT IS DESIGNED TO MAKE THE INDUSTRY

MORE RESPONSIBLE AND ACCOUNTABLE TO THE NEW CAR CONSUMERAND ITS LONG TERM EFFECT WILL BE TO CREATE AN ATTITUDINAL CHANGE IN THE INDUSTRY. IT IS A LEGISLATIVE STATEMENT TO THE INDUSTRY THAT IT SHOULD IMPROVE ITS QUALITY CONTROL AND WARRANTY SERVICE AND THUS STAND FIRMLY BEHIND ITS PRODUCTS.

SINCE THE PROBLEM OF THE PURCHASE AND REPAIR OF AUTOMOBILES IS THE NUMBER ONE CONSUMER PROBLEM IT IS TIME FOR US TO LOOK AT OUR LAWS AND ACKNOWLEDGE THAT THEY ARE NOT WORKING AS ORIGINALLY INTENDED. IT IS TIME FOR US TO LESSEN THE LEGAL BURDENS THAT EXIST FOR THE CONSUMER.

THE LEMON LAW STRENGTHENS THE POSITION OF A NEW CAR BUYER WHO IS FORCED TO PLAY THE "WEAR DOWN GAME" WHEN THE MANUFACTURER OR AGENT REFUSES TO ACKNOWLEDGE DEFECTS OR REQUESTS ENDLESS OPPORTUNITIES TO FIX THEM.

I BELIEVE THAT THIS LAW WILL HELP TO RESTORE THE CONFIDENCE OF THE WORKING PUBLIC IN ITS AUTOMOBILE INDUSTRY; AND THUS AID THE INDUSTRY TO REGAIN ITS FORMER STATURE. IT SHOULD PROVIDE INPETUS TO THE AUTOMOBILE MANUFACTURER'S QUALITY CONTROL AND TO BETTER REPAIR SERVICE BY AUTOMOBILE DEALERS. IT WILL REDUCE THE INCONVENIENCE, THE EXPENSE, THE FRUSTRATION, THE FEAR AND EMOTIONAL TRAUMA THAT LEMON OWNERS COMMONLY ENDURE; AND IT WILL PROVIDE A CLEAR STANDARD THAT WILL GIVE CONSUMERS AN EFFECTIVE, REASONABLE AND MEANINGFUL REMEDY WHICH WILL IN TURN, ULTIMATELY REDUCE COSTS AND DELAYS OF LITIGATION.

RIGHT NOW, THE CARDS ARE STACKED AGAINST THE NEW CAR CONSUMER. THERE ARE NO PRACTICAL ECONOMICAL, LEGAL OR PROCEDURAL SOLUTIONS AVAILABLE. THE FINANCIAL AND EMOTIONAL SQUEEZE OF A LEMON CAR MUST BE PUT ON THE MANUFACTURER WHERE IT BELONGS. THE LEMON LAW DOES THAT.

State of Connecticut
GENERAL ASSEMBLY
STATE CAPITOL
HARTFORD, CONNECTICUT 06106

PRESS CONFERENCE -- JANUARY 3, 1984

State Captiol, Hartford Two years ago the Connecticut Lemon Law was introduced in our General Assembly. It took everyone by surprise, and now is the law in 18 other states with more to come in 1984. The Law met a tremendous public need, one that had not been addressed by other laws and procedures.

The 1982 Connecticut Lemon Law opened the door for Connecticut new car consumers. We, the original sponsor of that legislation, are introducing today a comprehensive 1984 Lemon Law Revision which reflects our 15 months' experience with the Law, which includes some modifications and improvements by other states, and which represents the input of state officials, state agencies, our car dealers, and most of all, the consumer.

The Lemon Law, like any new concept, process or idea, has had growing pains; and it is essentially from those growing pains that we are, this morning,calling for the establishment of a State-run independent arbitration procedure which will handle Lemon Law claims for those manufacturers who do not have programs and for those manufacturers whose programs are not certified by the Attorney General as being in compliance with the Lemon Law.

The thrust of this new arbitration process is to provide equal protection of the Law to all new car buyers. To date, only 6 of the 26 auto manufacturers who sell cars here in Connecticut have arbitration programs. With our court system bogged down with backlogs of 4 - 6 years and with the cost of litigation skyrocketing, it is incumbent upon us to offer all consumers a process with which to resolve auto warranty problems. It is essential that we provide consumers with a complaint resolution mechanism that will promptly, objectively and impartially apply the laws of our State to the cases before it. The courts cannot do this, and we have found, through complaints from the public and the findings of the Attorney General, that the industry is not doing it.

The arbitration process that is being offered this morning is a totally integrated and co-ordinated approach to the abuses and problems that we have experienced in the last 15 months. It involves the offices of the Department of Consumer Protection, Attorney General and Motor Vehicle Department. It does not do damage to the existing industry programs provided they receive certification from the Attorney General. It affords consumers an appellate process where industry programs have engaged in specified violative practices. Basically, it fills a huge void by giving everyone arbitration rights and secondly, insuring that industry programs are legitimate and law-complying through State oversight, monitoring and certification.

In addition to the State arbitration component, the Revision calls for the expansion of the Lemon Law coverage, which would be identical to

New York law and the bill pending in Congress. It will now include safety defects along with defects concerning the car's use and value. It clearly spells out what items are reimbursable and includes with it the recoupment of finance charges, loaner fees and towing expenses. It addresses the issue of what happens to a returned "lemon." It defines what is a reasonable allowance for use and makes any violation of the Lemon Law a violation of the Connecticut Unfair Trade Practices Act.

Lemon Law II, when enacted, will enhance Connecticut's reputation as a leader and will again be a model for other states to follow.

Office of Legislative Research

566-8400

CONNECTICUT
GENERAL ASSEMBLY

SUMMARY OF PROPOSED 1983 REVISIONS TO THE "LEMON LAW"

AN ACT CONCERNING NEW MOTOR VEHICLE WARRANTIES AND DISPUTE RESOLUTION PROCEDURES FOR DEFECTIVE VEHICLES (LCO #205)

To ensure equal protection for all new car buyers in the state, the proposed bill would:

I. establish an independent arbitration procedure within the Department of Consumer Protection (DCP) for use by consumers who purchase cars from manufacturers which have not voluntarily established dispute settlement mechanisms that meet the law's requirements.

A. The Commissioner of DCP would appoint as many three-member panels as necessary to handle the case load.

B. The panel(s) would have access to a professionally certified technical expert, recommended by the Motor Vehicle Department (MVD), who would receive all documentary evidence in a written arbitration process or who would sit as a nonvoting member for oral testimony and serve as a consultant in determining the mechanical status of a vehicle in dispute.

C. Use of the panel and the choice of a written or oral arbitration process are the consumer's options.

D. Notice to the public of the availability of the DCP mechanism would be through a prominently posted sign in the showroom of any dealer whose manufacturer does not offer a certifiably valid "703" arbitration process.

E. The consumer would initiate a request for arbitration either by a toll-free phone call or by writing to DCP.

F. The DCP process would be structured along modified "703" lines (e.g. regarding recordkeeping, statistical summaries, etc.).

G. The DCP panel would have a maximum of 47 days to render a decision, counting from the time the consumer files a DCP form containing information necessary to dispute resolution, together with a filing fee of $25.00 which is refundable if, after screening, DCP determines the dispute is not eligible for arbitration under the law's criteria.

H. After accepting the dispute, DCP would notify the manufacturer of the arbitration request and send a form seeking relevant information.

I. The manufacturer would have to return the form with a filing fee equal to 2% of the contract price of the disputed vehicle. The bill would define the contract price as the total cost of the car, including dealer preparation and transportation charges, undercoating, options, etc. All fees received would be earmarked to defray the administrative costs of the DCP program through a fund to be known as the Automobile Dispute Settlement Fund.

J. The DCP panel must render a fair decision with appropriate remedies which may include: repairs; replacement with an identical or comparable vehicle satisfactory to the consumer; refund of the full contract price plus collateral charges (defined as including sales tax, license and registration fees and similar government charges); reimbursement for expenses and compensation for consequential damages as defined in the Uniform Commercial Code, or any other remedies available under applicable state and federal laws.

K. The DCP panel decision must specify a date for performance and completion of awarded remedies and would be binding on the manufacturer if the consumer accepts. DCP would verify performance by contacting the consumer within 10 days of the decision deadline.

L. DCP would maintain records of all disputes, including an index by brand name and model and would publish a statistical summary every six months indicating the number of refunds and replacements awarded and a record of manufacturer compliance. A copy of the summary would be filed with MVD and would be considered in MVD's issuance of annual licenses to manufacturers to sell cars in the state.

M. DCP would be authorized to request MVD to institute license suspension or revocation proceedings against any manufacturer who fails to comply with the act's provisions. DCP's Commissioner would have subpoena powers and be authorized to prescribe the arbitration process by regulation.

II. Establish an appellate process for consumers in which a DCP panel would adjudicate a dispute if the consumer alleged injury through a practice by a manufacturer-sponsored dispute mechanism. The following manufacturer mechanism practices would be deemed violative and subject to such an appeal:

A. delaying a decision beyond 47 days after the date a consumer initially notified the mechanism that a dispute exists, either by phone or letter;

B. delaying performance of awarded remedies beyond 10 days after a decision, except that a manufacturer would be allowed 30 days to comply with delivery of a replacement vehicle acceptable to the consumer or to refund the full contract price with all collateral charges and consequential damage compensation;

C. requiring the consumer to make the vehicle available more than once for inspection by a manufacturer representative and more than once for a dealer's opportunity to repair the same defect, in which cases an acceptable loaner vehicle must be made available to the consumer;

D. failing to consider in decisions all remedies prescribed by law (i.e., repair, replacement, refund, collateral charges and compensation for consequential damages as well as any other available legal remedies); or

E. requiring the consumer to take any action or assume any obligation not specifically authorized under Federal Trade Commission "703" regulations.

III. Provide for state certification, monitoring and evaluation of all manufacturer-sponsored dispute mechanisms by:

A. requiring the Attorney General to prepare and publish an annual assessment of each manufacturer mechanism and to issue a certificate of approval to those found to be complying in all respects with "703" regulations. A consumer would not be obliged to resort to an uncertified manufacturer procedure to obtain a refund or replacement, but could take his/her case to a DCP panel instead. The Attorney General's report and certificate would be sent to the Commissioner of MVD to be used as considerations in the issuance of manufacturer licenses;

B. requiring the manufacturer to submit a copy of the annual audit required under "703" regulations to the Attorney General, with any other information the Attorney General might require, such as a record of refunds and replacements awarded in decisions by manufacturer-sponsored mechanisms.

IV. Add to or clarify the present "Lemon Law" by:

A. stipulating that any autmobile sold on or after passage of the bill would be covered by the act's remedies for two years following delivery or 18,000 miles, whichever comes first. (This is in addition to present statutory provisions covering periods of any express warranty or for one year following delivery during which time the same nonconformity has been subject to repair four or more times or has been out of service for repair 30 days or more.);

B. stating that the law applies to any defect substantially impairing the safety, as well as the use or value, of the vehicle;

C. defining what constitutes "contract price," "collateral charges," and "consequential damages" (see items I and J under preceeding section I);

D. establishing a formula for determining a "reasonable allowance for use" which may be deducted from any refund. The amount would be 1/100,000 of the number of miles on the odometer at the time the manufacturer accepted return of the vehicle.

(Ex: on a $10,000 car driven 2,000 miles, allowance would be $200)

E. requiring the clear, conspicuous written disclosure of the history of any car returned for refund or replacement before it could be resold. The Commissioner of MVD would prescribe, by regulation, the exact form and content of the disclosure;

F. making clear that under the Uniform Commercial Code, as amended by PA 83-320, no manufacturer may exclude, limit or modify implied warranties on the fitness and merchantability of any vehicle;

G. clarifying that any manufacturer dispute settlement procedure set up in accordance with FTC "703" regulations must comply with those regulations as they existed on October 1, 1982--the effective date of the original "Lemon Law "

H. declaring that any violation of the act is a violation of the Connecticut Unfair Trade Practices Act (CUTPA).

The proposed bill would become effective on passage.

RLS
12/29/83

STATE OF CONNECTICUT

Raised Committee Bill No. Page 1

Referred to Committee on

LCO No. 134

Introduced by (GL)

General Assembly,

February Session, A.D., 1984

AN ACT CONCERNING NEW MOTOR VEHICLE WARRANTIES AND DISPUTE RESOLUTION PROCEDURES FOR DEFECTIVE VEHICLES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (a) The department of consumer protection, shall provide an independent arbitration procedure for the settlement of disputes between consumers and manufacturers of motor vehicles which do not conform to all applicable warranties under the terms of sections 42-179 of the general statutes, as amended by section 1 of public act 83-351, public act 83-458 and section 3 of this act. The commissioner shall establish one or more automobile dispute settlement panels which shall consist of three members appointed by the commissioner of consumer protection, only one of whom may be directly involved in the manufacture, distribution, sale or service of any product. Members shall be persons interested in consumer disputes and shall serve without compensation for terms of two years at the discretion of the commissioner.

(b) An owner of any motor vehicle purchased at any time on and after July 1, 1984 and which fails to conform to such applicable warranties as defined in said section 42-179 of the general statutes, may bring a grievance to a department panel if the manufacturer of the vehicle has not established an informal dispute settlement procedure which the attorney general has certified as complying in all respects with the requirements of said section 42-179 of the general statutes. The consumer may initiate a request for arbitration by a department panel by calling a toll-free telephone number designated by the commissioner or by requesting an arbitration hearing in writing. The consumer shall file, on forms prescribed by the commissioner, any information deemed relevant to the resolution of the dispute and shall return the form, accompanied by a filing fee of twenty-five dollars, within five days after he receives it. Such complaint form shall offer the consumer a choice of presenting any subsequent testimony orally or in writing. The filing fee shall be refunded if the department panel determines that a complaint does not allege a violation of any applicable warranty under the requirements of said section 42-179 of the general statutes. Upon acceptance of the complaint, the commissioner shall notify the manufacturer of the filing of a request for arbitration and shall obtain from the manufacturer, in writing on a form prescribed by the commissioner, any information deemed relevant to the resolution of the dispute. The manufacturer shall return the form within five days of receipt, together with a filing fee equal to two per cent of the contract price of the vehicle in dispute.

(c) The department of consumer protection shall investigate, gather and organize all information necessary for a fair and timely decision in each dispute. The commissioner may issue subpoenas on behalf of any department panel to compel the attendance of witnesses and the production of documents, papers and records relevant to the dispute. The department shall forward a copy of all written testimony, including all documentary evidence, to an independent technical expert certified by the National Institute of Automotive Excellence, who shall review such material and be available to advise and consult with the department panel. An expert shall sit as a nonvoting member of a department panel whenever oral testimony is presented. Such experts may be recommended by the commissioner of motor vehicles at the request of the commissioner of consumer protection. A department panel shall, as expeditiously as possible, but not later than forty-seven days after the time the consumer files the complaint form together with the filing fee, render a fair decision based on the information gathered and disclose its findings and the reasons therefor to the parties involved. The decision shall provide appropriate remedies, including, but not limited to one or more of the following:

(1) Repair of the vehicle;

(2) Replacement of the vehicle with an identical or comparable new vehicle acceptable to the consumer;

(3) Refund of the full contract price, plus collateral charges as specified in subsection (c) of said section 42-179 of the general statutes;

(4) Reimbursement for expenses and compensation for for consequential damages as specified in subsection (c) of said section 42-179 of the general statutes;

(5) Any other remedies available under the applicable warranties, this act or the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act, 88 Stat. 2183 (1975), 15 USC 2301 et seq., as in effect on October 1, 1982.

The decision shall specify a date for performance and completion of all awarded remedies, and shall be binding on the manufacturer if the consumer elects to accept the decision. The department shall contact the consumer, within ten working days after the date for performance, to determine whether performance has occurred.

(d) The department shall maintain such records of each dispute as the commissioner may require, including an index of disputes by brand name and model. The department shall, at intervals of no more than six months, compile and maintain statistics indicating the record of manufacturer compliance with arbitration decisions and the number of refunds or replacements awarded. A copy of the statistical summary shall be filed with the commissioner of motor vehicles and shall be considered by him in determining the issuance of any manufacturer license as required under section 14-67a of the general statutes, as amended by section 10 of public act 83-489. The summary shall be a public record.

(e) If a manufacturer has not established an informal dispute settlement procedure certified by the attorney general as complying with the requirements of said section 42-179 of the general statutes, public notice of the availability of the department's automobile dispute settlement procedure shall be prominently posted in the place of business of each new car dealer licensed by the department of motor vehicles to engage in the sale of new motor vehicles. Display of such public notice shall be a condition of licensure under section 14-52 of the general statutes, as amended by section 3 of public act 83-489 and section 14-64 of the general statutes. The commissioner of consumer protection shall determine the size, type face, form and wording of the sign required by this section, which shall include the toll-free telephone number and the address to which requests for the department's arbitration services may be sent.

(f) Any consumer injured by a practice which does not conform with procedures established by a manufacturer pursuant to subsection (b) of section 2 of this act and the provisions of Title 16 Code of Federal Regulations Part 703, as in effect on October 1, 1982, may appeal any decision rendered as the result of such a procedure by requesting adjudication de novo of the dispute by a department panel. Filing procedures and fees for appeals shall be the same as those required in subsection (b) of this section. The findings of the manufacturer's informal dispute settlement procedure may be admissible in evidence at such department dispute settlement panel hearing and in any civil action subsequently arising out of any warranty obligation or matter related to the dispute. Any consumer so injured may, in addition, request the attorney general to investigate the manufacturer's procedure to determine whether its certification shall be suspended or revoked after proper notice and hearing.

(g) The commissioner of consumer protection shall adopt regulations, in accordance with the provisions of chapter 54 of the general statutes, within ninety days after the effective date of this act, to carry out the purposes of this section. Written copies of the regulations and appropriate arbitration hearing procedures shall be provided upon the request of any person.

Sec. 2. (NEW) (a) The attorney general shall prepare an annual report evaluating the operation of informal dispute settlement procedures established by manufacturers of new motor vehicles and shall issue a certificate of approval to those manufacturers whose settlement procedures comply in all respects with the provisions of Title 16 Code of Federal Regulations Part 703, as in effect on October 1, 1982, and with the provisions of subsection (b) of this section. The report and certification shall be public records. The attorney general or any agent authorized by him to conduct any inquiry or investigation related to the certification of a manufacturer's informal dispute settlement procedure shall have the power to issue subpoenas requiring the attendance of witnesses and the production of records, documents or other evidence in connection therewith. If the attorney general certifies a manufacturer's informal dispute settlement procedure, the provisions of subsection (d) of said section 42-179 of the general statutes, concerning refunds or replacement shall not apply to any consumer who has not first resorted to such procedure. A copy of the attorney general's report and certification shall be forwarded by the attorney general to the commissioner of motor vehicles, who may consider such report and certification in determining the fitness of an applicant for a manufacturer's license to engage in business as a manufacturer of motor vehicles for sale in this state, as provided for in section 14-67a of the general statutes.

(b) A manufacturer's informal dispute procedure shall not include any practices which: (1) Delay a decision in any dispute beyond forty-seven days after the date on which the consumer initially resorts to the informal dispute settlement procedure either by a telephone call or by written notification that a dispute exists; (2) delay performance of remedies awarded in a settlement beyond ten days after a decision, except that a manufacturer may have thirty days following the date of the decision to deliver a replacement of a motor vehicle acceptable to the consumer or to refund the full contract price of the vehicle together with all collateral charges, and all consequential and incidental damages as defined in said section 42-179 of the general statutes; (3) require the consumer to make the vehicle available more than once for inspection by a manufacturer's representative, and more than once for repair of the same defect by a dealer, in which cases provision shall be made for the loan of an alternate vehicle, acceptable to the consumer, for use during the periods required for inspection or repair; (4) fail to consider in decisions any remedies provided by this act, such remedies to include (A) repair, replacement and refund, (B) reimbursement for expenses and collateral charges, (C) compensation for consequential and incidental damages as defined in said section 42-179 of the general statutes and (D) any other remedies available under applicable express or implied warranties; or (5) require the consumer to take any action or assume any obligation not specifically authorized under the provisions of Title 16 Code of Federal Regulations Part 703, as in effect on October 1, 1982.

(c) Any manufacturer establishing an informal dispute settlement procedure shall file with the attorney general a copy of the annual audit required under the provisions of Title 16 Code of Federal Regulations Part 703, as in effect on October 1, 1982, together with any additional information, including the number of refunds and replacements made by the manufacturer during the period audited, that the attorney general may require for purposes of certification.

Sec. 3. Section 42-179 of the general statutes, as amended by section 1 of public act 83-351 and public act 83-458 is repealed and the following is substituted in lieu thereof:

(a) As used in this section and section 2 of [this act] PUBLIC ACT 83-351: (1) "Consumer" means the purchaser, other than for purposes of resale, of a motor vehicle, any person to whom such motor vehicle is transferred during the duration of an express warranty applicable to such motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty; and (2) "motor vehicle" means a passenger motor vehicle or a passenger and commercial motor vehicle, as defined in subdivisions (35) and (36) of section 14-1, which is sold in this state.

(b) If a new motor vehicle does not conform to all applicable express warranties, and the consumer reports the nonconformity to the manufacturer, its agent or its authorized dealer, (1) during the term of such express warranties or during the period of one year following the date of original delivery of the motor vehicle to a consumer WHICHEVER IS THE EARLIER DATE OR (2) IN THE CASE OF A MOTOR VEHICLE SOLD ON OR AFTER THE EFFECTIVE DATE OF THIS ACT, DURING THE PERIOD OF TWO YEARS FOLLOWING SUCH DATE OF ORIGINAL DELIVERY OR DURING THE FIRST EIGHTEEN THOUSAND MILES OF OPERATION, whichever is the earlier date, the manufacturer, its agent or its authorized dealer shall make such repairs as are necessary to conform the vehicle to such express warranties, notwithstanding the fact that such repairs are made after the expiration of [such term or such one-year period] THE APPROPRIATE TIME PERIOD.

(c) If the manufacturer, or its agents or authorized dealers are unable to conform the motor vehicle to any applicable express warranty by repairing or correcting any defect or condition which substantially impairs the use, [and] SAFETY OR value of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer shall replace the motor vehicle with a new motor vehicle ACCEPTABLE TO THE CONSUMER or accept return of the vehicle from the consumer and refund to the consumer THE FOLLOWING: (1) THE [the] full [purchase] CONTRACT price including, BUT NOT LIMITED TO CHARGES FOR UNDERCOATING, DEALER

PREPARATION AND TRANSPORTATION AND INSTALLED OPTIONS, (2) all collateral charges, INCLUDING, BUT NOT LIMITED TO, SALES TAX, LICENSE AND REGISTRATION FEES, AND SIMILAR GOVERNMENT CHARGES, (3) ALL FINANCE CHARGES INCURRED BY THE CONSUMER AFTER HE FIRST REPORTS THE NONCONFORMITY TO THE MANUFACTURER, AGENT OR DEALER AND DURING ANY SUBSEQUENT PERIOD WHEN THE VEHICLE IS OUT OF SERVICE BY REASON OF REPAIR, AND (4) ALL CONSEQUENTIAL AND INCIDENTAL DAMAGES AS DEFINED IN SECTION 42a-2-715, less a reasonable allowance for the consumer's use of the vehicle. No authorized dealer shall be held liable by the manufacturer for any refunds or vehicle replacements in the absence of evidence indicating that dealership repairs have been carried out in a manner inconsistent with the manufacturers' instructions. Refunds shall be made to the consumer, and lienholder if any, as their interests may appear. A reasonable allowance for use shall be that amount [directly attributable to use by the consumer prior to his first report of the nonconformity to the manufacturer, agent or dealer and during any subsequent period when the vehicle is not out of service by reason of repair] OBTAINED BY MULTIPLYING THE TOTAL CONTRACT PRICE OF THE VEHICLE BY A FRACTION HAVING AS ITS DENOMINATOR ONE HUNDRED THOUSAND AND HAVING AS ITS NUMERATOR THE NUMBER OF MILES THAT THE VEHICLE TRAVELED PRIOR TO THE MANUFACTURER'S ACCEPTANCE OF ITS RETURN. It shall be an affirmative defense to any claim under this section (1) that an alleged nonconformity does not substantially impair such use, [and] SAFETY OR value or (2) that a nonconformity is the result of abuse, neglect or unauthorized modifications or alterations of a motor vehicle by a consumer.

(d) It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranties, if (1) the same nonconformity has been subject to repair four or more times by the manufacturer or its agents or authorized dealers within the express warranty term or during the period of one year following the date of original delivery of the motor vehicle to a consumer, WHICHEVER IS THE

EARLIER DATE OR (2) IN THE CASE OF A MOTOR VEHICLE SOLD ON OR AFTER THE EFFECTIVE DATE OF THIS ACT, DURING THE PERIOD OF TWO YEARS FOLLOWING SUCH DATE OF ORIGINAL DELIVERY OR DURING THE FIRST EIGHTEEN THOUSAND MILES OF OPERATION, whichever is the earlier date, but such nonconformity continues to exist or [(2)] (3) the vehicle is out of service by reason of repair for a cumulative total of thirty or more calendar days during such term or during such period, whichever is the earlier date. The term of an express warranty, such one-year period, SUCH TWO-YEAR PERIOD and such thirty-day period shall be extended by any period of time during which repair services are not available to the consumer because of a war, invasion, strike or fire, flood or other natural disaster.

(e) NO MOTOR VEHICLE WHICH IS RETURNED TO THE MANUFACTURER AND WHICH REQUIRES REPLACEMENT OR REFUND SHALL BE RESOLD IN THE STATE WITHOUT CLEAR AND CONSPICUOUS WRITTEN DISCLOSURE OF THE FACT THAT SUCH MOTOR VEHICLE WAS SO RETURNED PRIOR TO RESALE. THE COMMISSIONER OF MOTOR VEHICLES SHALL PRESCRIBE THE EXACT FORM AND CONTENT OF ANY SUCH DISCLOSURE STATEMENT.

(f) ALL EXPRESS AND IMPLIED WARRANTIES ARISING FROM THE SALE OF A NEW MOTOR VEHICLE SHALL BE SUBJECT TO THE PROVISIONS OF PART 3 OF ARTICLE 2 OF TITLE 42a, AS AMENDED BY PUBLIC ACT 83-320.

[(e)] (g) Nothing in this section shall in any way limit the rights or remedies which are otherwise available to a consumer under any other law.

[(f)] (h) If a manufacturer has established an informal dispute settlement procedure which complies in all respects with the provisions of Title 16 Code of Federal Regulations Part 703, [as from time to time amended] AS IN EFFECT ON OCTOBER 1, 1982, the provisions of subsection (c) of this section concerning refunds or replacement shall not apply to any consumer who has not first resorted to such procedure.

Sec. 4. Section 2 of public act 83-351 is repealed and the following is substituted in lieu thereof:

In any action by a consumer against the manufacturer of a motor vehicle, or the manufacturer's agent or authorized dealer, based upon the alleged breach of an express or implied warranty made in connection with the sale of such motor vehicle, the court, in its discretion, may award to the plaintiff his costs and reasonable attorney's fees [or, if the court determines that the action was brought without any substantial justification, may award costs and reasonable attorney's fees to the defendant].

Sec. 5. (NEW) The commissioner of consumer protection may, in consultation with the commissioner of motor vehicles, request institution of proceedings under section 14-67c of the general statutes against any manufacturer found to have failed to comply with the provisions of this act.

Sec. 6. (NEW) There is established a fund to be known as the automobile dispute settlement procedure fund. All fees received by the department of consumer protection pursuant to section 1 of this act shall, upon deposit in the general fund, be credited by the treasurer to the automobile dispute settlement procedure fund. The resources of such fund shall be used by the department of consumer protection for the purpose of administering said automobile dispute settlement procedure.

Sec. 7. (NEW) A violation of any of the provisions of this act shall be deemed an unfair or deceptive trade practice under subsection (a) of section 42-110b of the general statutes.

Sec. 8. This act shall take effect from its passage.

SANDRA HORNER.
77, HILDENBORO SQ.
AGINCOURT. M1W 1Y2
499-2563.

CAR – '83 DODGE CHARGER
PURCHAASED MAY 20th 83
2.2 LITRE ENGINE.

FROM NEW IT HAS BURNT OIL – 1000 KM = 1 LITRE OIL. ROUGH IDLE – EVEN IN THE SUMMER, WARM IT UP FOR 3–4 MINS, DRIVE ½ MILE + IT WOULD QUIT AT THE SAME INTERSECTION.

AFTER 1000 KM THE ODOMETER BROKE. ALTERNATOR PANEL GAUGE BROKE. BOTH REPLACED. AFTER 2000 KM – NEW PISTON RINGS + BEARINGS FITTED.

CAR WAS IN AT THIS TIME FOR APPROX 2 WEEKS.

SINCE IT WAS NEW ENGINE TAKES 8 PUMPS OF ACCEL. ~~[illegible]~~ PEDAL FOR IT TO. RUN. AFTER TUNE-UPS WOULD BE OKAY FOR 2 WEEKS + THEN GET BACK TO NORMAL - 8 PUMPS.

PAINT COMING OFF IN 2 PLACES HOOD + ROOF - WAS DONE.

BRAKES ARE TERRIBLE. BEEN BACK TWICE, GIVEN UP. AFTER DRIVING THE COURTESY CAR (K CAR) WHAT A DIFFERENCE. THE CHARGER BRAKES ARE NOT POSITIVE + HAVE TO ALLOW FOR THAT FACT WHEN DRIVING

I WOULD SAY THE CAR HAS BEEN IN APPROX 3 WEEKS OF TIME FOR REPAIRS. AT THE MOMENT IT HAS BEEN IN 30 DAYS (EXTRA TO THE 3 WEEKS) AND IS

3/.

HAVING A NEW HALF-BLOCK
INSTALLED – (FROM CYLINDER HEAD
DOWN) IT STILL USED 1 LITRE
OF OIL FOR 1000 KM (9000 KM ON ODOMETER)
IT WAS RUNNING ON (PRE-IGNITION)
AFTER TURNING OFF IGNITION.
EXAMPLE OF ROUGH IDLE:—
A COMPLETE STRANGER REMARKED IN
A CAR PARK – HOW ROUGH IT SOUNDED
+ HE GRABBED THE EXHAUST-PIPE
TELLING HER – "HERE'S THE PROBLEM
YOUR EXHAUST IS LOOSE".
IT WASN'T, IT WAS ROUGH-IDLE
BANGING EXHAUST PIPE ON CHASSIS.
MY DAUGHTER'S 1ST NEW CAR + IS
VERY UNHAPPY WITH IT. USED TO
CLEAN + POLISH IT. NOW LOST
INTEREST – 'IT'S A LEMON" SHE
SAYS".

Yours truly.

A. A. Hodley

Jan 18/84

Problems associated with my 1980 Honda Civic

1. CV joints need replacement the problem was evident at about 50,000 km. The problem was diagnosed as slack in the front rubber mount of the stabilizing bar.
2. There is excessive flaking of paint; the hood already has perferations in metal; there are also parts on the body [redacted] where the paint is bubbling, indicating rusting below the paint surface.
3. The sender switch on the radiator failed therefore the

fan didn't come on and the radiator core boiled over, requiring replacement of radiator and sender switch.

4. The ignition wires appear to last only one year before requiring replacement. This is evident in rainy weather because the car has a hard time starting and it losses power under load, replacing the cable set, always clears up the problem

5. The ignition coil had to be replaced because it burned out.

6. The turn signals never worked properly after the warranty was over

7. The terminals on the horn corroded requiring repair of the horn.

G.A. DeCaria P.Eng

Buss - 449-5050
Home - 731-4496

August 22, 1983

Mr
Supervisor of Customer Services

Toronto Ont.

Dear Mr.

Thank you for your time and consideration on the phone on August 18th, 1983. As we discussed, I have compiled a short history of my problem.

In July 1981, I leased a new 1982 Cavalier from in Oakville. The lease costs where based on a purchase price of about $13,000 and the monthly payments are $394.83 per month.

Very soon after taking delivery of the car, I brought it back for normal servicing. This was on August 4th, 1981. At that time I asked the service advisor, (spelling may be wrong) to correct the engine run on as well as the extremely high idling. told me that the car just needed the normal adjustments that most new cars recieved. When I picked up the car later, I found the engine run on had been corrected however now the car was frequently stalling at stops when idling.

Three weeks later I brought the car back for its original oil change and again I told that the idling wasn't right. I described the problem and said that without constant care of the gas pedal and gear shift the car would stall at most stops. When I picked up the car I found that it was no longer stalling however now it was idling at 1200 to 1400 RPM's and 1900 to 2200 RPM's with the air conditioner on. A few days later I brought it back and Bob sent me around to the back of Service To a particular mechanic. I'm not sure of the mechanic's name but he had something to do with tune ups. He hooked the car up to a large machine, put it in drive with the parking brake on and adjusted something under the hood. He then told me that the adjustments were made right on specifications. There was no work order filled out as this was only a follow up adjustment. When I left I still felt that the idling wasn't right (1000 to 1200 and 1600 to 1800 RPM's with the A/C on) but at least the car wasn't stalling.

In October, just over a month later, I brought the car back and again discussed the problem with . Again when I picked it up the idling was high.

At this point I should point out that I am a commissioned salesman and I put a lot of miles on my car. Any day without my car is a day without a commission. I am not in a position to leave my car every few days to get adjustments. HOwever I did persist.

In January 1982 I again brought my car back in for regular maintenance (adjusting the idle was becoming regular maintenance by then) and because the car pulled to the right when the brakes were applied. This was the first sign of my brake problem. When I picked up the car the brakes were fine however the car was still idling at 1000 to 1200 RPM's and more with the A/C on. Luckily it was winter and the A/C wasn't being used.

A Month later in February I had to bring the car back as the driver's window had broken of it's track. The part was ordered an a few days later I returned when the part arrived. Again the idle was discussed with , again it was worked on and again when I picked it up it was idling fast. I was beginning to believe that these newer small cars are supposed to idle extremely high.

Some time later and I'm not sure when as I seem to have lost the work order, I had to bring the car back in. This time the problem was noise as well as the idling. When I picked up the car it was explained to me that the exhaust system had become loose where it attaches to the engine. I found that the noise level was fine but the idle was still fast.

In June of 82 I had my next brake problem and again I discussed the idling with . When I came in to pick up the car I found that they were having problems with their brake grinder and I had to wait a short time. The car was brought out very close to closing time and it was suggested to me that I bring it back in a day or so for a road test, as they were not sure that the grinder was grinding true. Shortly there after did replace their grinder. When I left, the brakes seemed all right but the idling was unchanged. In the next few days I noticed that the right front hubcap was missing. This being the wheel that the brake was repaired on, I thought there would be no problem as it was probably still in garage.

Within a week I brought the car back in for the road test. After the road test the car was brought around back of the garage and adjustments were made under the hood. While I was waiting I told about the hubcap. He said that he would look for it and if he couldn't find it he would check into getting a replacement. Shortly thereafter Bob left the service department at and nobody else there seemed to care to much about the hubcap.

In August of 82 the car was back in. When it was picked up I was given promises of looking into the hubcap but the idling was unchanged.

Within a short time this proceedure was repeated.

I was quickly losing confidence in the service department at so in early December 82 I took the car to Petro Canada at 164 Kerr St. Oakville. The car was given a tune up and lubrication and the idle was adjusted. I found that the idling was the best since I had the car. At that time however I wasn't using the air conditioning.

By late January 83 I had my third problem with my brakes. I brought the car to the closest garage, Barclay's Auto Service at 2293 Lakeshore Rd. W. Oakville.

Afterwards I again confronted in regards to the hubcap as well as the possibility that the previous brake job (with the faulty grinder) was poorly done. John sent me in to see his boss, who's name escapes me at this time. The service manager, although agreeing that 3 brake jobs in 60,000 Kilometres was excessive, refused any responsibility for the poor brake condition. At that time he suggested that They would be willing to pay for half of the hubcap. I must admit that I lost my temper finally. I could not understand how anyone could admit responsibility for only half the hubcap.

The car had not been idling to badly for the rest of the winter averaging 900 to 1100 RPM's in Park. As the summer warmed up in earlier July and I started using the air conditioner more the car would idle at 2100 to 2300 RPM's in Park and 1400 to 1600 RPM's in drive. I found that I had to turn off the A/C to change gears. As I was on vacation and out of the country for most of July, I could not bring the car in for service.

A couple of weeks ago after starting the car hot, I found the car wouldn't go into drive. It would go into reverse but not drive. I had the car towed to Mr. Transmission on Lakeshore Rd. in Oakville where I received one of three quotes. Mr. Transmission got the job.

After the transmission was repaired and for no known reason my Drivers side window fell out of it's track again. The same way that it happened in February of 82.

On Thursday August the 18th, I brought the car back to Mr. Transmission for an adjustment to the neutral switch. Ken, from Mr. Transmission, and myself took the car out for a test drive. Ken told me at that time that in his opion the car was idling much to fast. especially with the A/C on and that there was definitely something wrong with the brakes. He suggested that I talk to , the shop foreman of . When I arrived, understandably Mr. said that he could do nothing for me under warrenty. He suggested that I look up and contact Customer Service. Hence my telephone call and this follow up letter.

At this point I would like to say that I am a very average driver and I take my car in for regular maintenence. I never ride the brake when driving and I drive with one foot. I always warm the car up for 30 or 40 seconds and I never leave the car idling for more than a minute or so. I don't do anything that I can think of that may cause these problems. I do put on a great deal of miles however 2/3s of these miles are on the highway.

Being a layman and not being mechanically inclined in the least my opion may not merit your attention however if a car always idles faster then 1000 RPM's and higher, there must be heavy wear on a transmission when it is slipped into gear. It also makes sense that when the car is idling at a stop light in drive, there must be tremendous wear on the brakes. It seems incredable to me that a brand new $13,000 car, built by a company with as good a reputation as General Motors should have four brake failures, a $1,200.00 transmission failure, two drivers side power window failures and an idling problem.all within the first two years of ownership.

As of today my car will be needing a brake job, the power window needs fixing and something is desparately needed to be done on the idling before all these problems start over again. I would appreciate hearing from somebody soon as these repairs are badly needed.

Please excuse the length of this letter and accept my appreciation for your time and anticipated effort on my behave.

I may be contacted at 3225 Victoria St.
Oakville Ont.

res. 825-0539
bus. 844-1777

E Penney

SINCE THIS LETTER WAS WRITTEN I HAD TO GIVE UP ON THE CAR. I BROUGHT THE CAR BACK TO THE DEALER AND LEFT IT. THE CAR WAS SOLD TO A NEW PURCHASER WHO I HAVE SINCE CONTACTED. THE CAR HAS BEEN INTO THE DEALER FOR CLOSE TO TWO MONTHS HAVING THE CARBARATOR REBUILT. THE DEALER TOLD THE NEW BUYER THAT THEY COULDN'T GET A KIT TO REBUILT IT AND THAT THEY HAD CHECKED EVERYWHERE FOR ONE. THE NEW OWNER CALLED 3 OTHER DEALERS IN THE AREA, 2 OF THEM HAD THE PART. THE CAR IS NOW RUNNING VERY WELL.

WHEN THE DEALER THREATENED LAW SUIT THEY TOLD ME THAT THEY SOLD THE CAR FOR $6300. THE NEW OWNER TOLD ME + I HAVE A COPY OF THE CONTRACT THAT HE PAID $6500.

119 Yonge Boulevard,
Toronto, Ontario.
M5M 3H2
January 25th, 1984.

Home: 488 - 3966

**Bus: (1) 576 - 0210,
ex. 302**

Municipality of Metropolitan Toronto,
Metro Clerk's Office,
New City Hall,
TORONTO, Ontario.

Attention: Mrs. Eileen Berriman

Dear Mrs. Berriman:

Further to our telephone conversation, I enclose my submission to the committee appointed by Metro Council to look into "lemon" cars and repair problems involving cars. Thank you for calling about the meeting.

As mentioned to you when we spoke originally some months ago, as an owner of a "lemon" I would be most interested in assisting this committee in any way that I can over and above this submission. I have worked in the legal field as a paralegal for a number of years prior to my recent career switch to teaching in the law program at Durham Community College.

I would appreciate, if it is possible, an opportunity to work with the committee both as an owner and as part of my P.D. I look forward to hearing further in connection with my request.

Yours very truly,

Madge Day

M. Day, PLS (Mrs.)

Encl.

delivered

P.S. In an attempt to save you some time, I have prepared three copies of my submission for the members of the Committee in duotangs, which are enclosed.

On July 7, 1980, I signed a contract with a Toronto Ford dealership to purchase a 1980 Ford Granada Ghia at a total cost of $9,328.00 -- my first car. Had I known what was in store for me as a new car owner, it would not have been such a happy occasion. A recent career change made it mandatory that I purchase a car, otherwise I would have remained a happy T.T.C. rider. I was, and am, in favour of "the better way" especially in view of the initial cost of my investment plus the additional repair costs and aggravation I have experienced, not to mention the cost of gas and oil, insurance and maintenance.

Delivery of my new car was made on July 25th, 1980. Within about ten days I noticed a thumping sound which originated in the rear. It required three trips in all, two to the Toronto dealership and one to a Ford dealer in Oshawa, when I could not get to the Toronto dealer, before the problem was diagnosed. The differential was replaced, although the work order indicates repaired, in October, 1980. The service representative stated to me it had been replaced. Test drives made on my earlier trips to the Toronto dealership resulted in my being told that the sound was there but that it was probably just the car "breaking in". Ford advertises that the owner of a car under warranty with a problem can take the car to any Ford dealer. While you can do so, which I did, I did not receive much assistance. The Oshawa dealership informed me they "couldn't hear a thing", so it was more time wasted for me. So much for advertising!! In addition to the previous trips to dealerships, I lost the use of my car for a day. The Toronto dealership did arrange, after some persuasion, for a courtesy car so I could get to and from work.

In November, 1980, the heater motor was replaced. Again two trips were involved -- one for diagnosis, the second for repairs. Total time involved for me about five hours in all.

Prior to this a cassete tape jammed in the tape deck and it was taken to the dealership to have the tape removed. Although I was informed at the time that the tape deck was not damaged, it was still not operating properly. This problem was finally resolved the following June and involved my personally driving to Kohmer Radio in central Toronto, leaving the radio and tape deck and then arranging to come back the following week to have the radio and tape deck re-installed.

There had been a problem on acceleration which I had reported in early August, 1980. The car was hesitating before acceleration would take place. Left the car at the dealership on August 10th because I would be away on vacation for two weeks and authorized my brother to follow up with the dealership. Problem could not be located I was advised. Reported in October, 1980, that the hesitation mentioned earlier was continuing. In December, 1980, when I took the car in to have other minor problems corrected and again complained about this hesitation, I was informed that this was caused by the spark plugs which were badly corroded and should be replaced. I paid for a tune up and replaced the spark plugs at 13,803 km. I was informed by the service representative that normally spark plugs are not replaced until at least 18,000 km. and that it looked as though the car travelled about 10 km. per day. I daily drive approximately 138 km,, all highway driving. City driving would be primarily from the highway 401 to my home which is located near Highway 401 and Avenue Road, plus grocery shopping and travelling to a tennis club which is centrally located in the City of Toronto. Highway driving would, I believe, constitute about 90% of my driving, the remaining 10% involving city driving.

In December, 1981, I experienced the problem of "squealing" brakes. The odometer read 37,521 km. Once again -- back to the dealership where I was advised by the mechanic on duty that evening that the squealing sound was caused by "glazing". He explained that because the disc brakes are exposed to the elements a coating of dust and grime gets on the linings and that the only solution to the problem was new brake linings plus machining the discs, all of which would cost me $110.00. Prior to receiving all this information, at the point in the inspection when all the wheels were off, the mechanic commented "brakes are as good as new, how long ago did we replace them?" I informed him that these were the original brakes, that most of my driving was highway driving and because I was a defensive driver was not required to use my brakes as much. When I raised the question as to why the brakes are designed so that essential elements are left exposed to the weather. I was advised this was a trade-off, that disc brakes are much more effective than drum brakes. Drum brakes are fully protected and cause fewer problems but are not as effective. I decided to put up with the noise which disappeared a few weeks later, never to return.

On February 15th, 1982, I arranged to have my car thoroughly checked out at the Ontario Motor League testing centre at a cost of $45.00. I forwarded a copy of the report, along with my letter to Ford Motor Company of Canada, which showed numerous problems, the most serious of which were:

1. exhaust system has a leak;
2. front shocks are broken and need replacement;
3. idle speed needs adjusting and this will probably correct the hesitation problem;
4. right signal light not working;
5. problem with the right rear parking light;

In addition the driver's courtesy light worked occasionally. I had complained earlier to the dealership about the right signal light which was checked. I was advised it appeared to be satisfactory.

Shocks are not covered under either the warranty or the extended warranty/service agreement. The car had travelled 42,360 km. most of which was highway driving on the 401. As a result of this report I left the car at the dealership on Friday, April 16th. When I picked the car up at 8:00 a.m. on Saturday, April 17th, 1982, the Sales Manager commented "it was a $468.00 job". Under the extended service plan it personally cost me $63.31. Replacement parts on this trip involved $194.79. Shortly after I replaced the thermostat after limping home along the 401 from Mississauga, with the red engine light glowing. This occurred late on Saturday on the July holiday weekend. I was fortunate to find my local garage able to diagnose and repair my car, otherwise I would have not been able to go to work after the holiday weekend since there was the danger that the engine would seize.

In August, 1982, I replaced the front shock absorbers and had the right signal repaired at a cost of approximately $77.00.

In February, 1982, I was again faced with a heating problem leading to replacement again of the thermostat. The replacement made in August, 1982, lasted about six months. On February 17th, 1983, I left the car at my local garage and the problem diagnosed was a rusted, leaking vaccuum cannister, which had to be replaced at a cost of $38.57.

In May, 1983, I suddenly heard a terrible clatter and discovered that the exhaust pipe was dragging. This meant replacement of the entire exhaust system, which included the resonator, the muffler and the accompanying pipes. There was nothing wrong with the resonator or the muffler, only the pipes which had rusted through, but because the unit installed at the factory was one solid unit, the whole system had to be replaced. While this may be more convenient from an assembly point of view, it certainly does not lower the cost for the new car owner when it comes time to replace some or all of the system. It appears to me that the pipes would be the least expensive part of the system and that in the public interest, this part should be separate for replacement purposes. The cost to me was $82.98. The car was less than three years old at this time.

For some time I had noticed and complained of a thumping sound coming from the front end of the car which the dealership was unable to locate although I had the car in at least twice for this problem. The test drives I was informed showed no problems. Finally in desperation I returned once more to the Ontario Motor League testing centre. Several items were located with the important/urgent items such as the tightening and replacement of the sending unit for the oil and the replacement of the front tires which were badly worn and on one tire the tread was separating. The odometer at this point read 83,185 km. and the car was just past the third anniversary of the delivery date, which was July 25, 1980. I replaced the two worn tires but the noise continued. The tires cost $167.11. I returned to the Ontario Motor League testing site and after further checking, I was asked to come in and view the car on the hoist. It was pointed out that the right rear tire was "dancing". This was some ten days after tire replacement and I had driven the car each week day to Oshawa, roughly 138 km. per day. I asked if the car was roadworthy, since time is a problem for me as a single working parent. I was informed that the cause of the "dancing" should be discovered immediately, that the car was not roadworthy and that to drive it over 40 km. was inviting trouble. I had visions that but for the grace of God, or the luck of the Irish, my daughter could have been an orphan. I returned to the garage who had replaced and balanced the new tires. The possible causes were as follows:

1. Tires were not properly balanced. In addition to the two new tires, the other tires had been rotated.
2. It was a wheel bearing or a tire rim which was damaged.
3. It was the rear end differential

Either of the last two alternatives are costly to repair but one has little choice. It was only due to the expertise of the garage that an appropriate diagnosis was made and the bearing replaced in the right rear wheel at a cost of $82.55, rather than $100.00 to $150.00 if the cause had been something else. This occurred in August, 1983.

In July, 1983, I once again heard a thumping sound which was diagnosed by my local garage as a problem in the exhaust system. I returned to the garage which had installed the exhaust system and was shown that the problem arose from the catalytic converter heat shield which had rusted through. This was replaced free of charge by the dealership since this occurred prior to 80,000 km.

In addition, in January, 1983, I experienced transmission problems. The transmission would not shift from first gear. When I first experienced this problem I immediately drove to my local garage but the problem had disappeared and I was informed that unless the problem was present, it could not be properly diagnosed. A few days later as I was leaving the 401 near Oshawa, the problem surfaced again. I was forced to have the car towed back to Toronto, lost a day at work and had to pay $68.88 for repairs to the transmission. Towing charges were $45.00.

In November I noticed that the heater was not working properly. This proved to require the repair and replacement of the heater control valve vaccuum at a cost of $17.98.

I believe the only reason I have not experienced more problems is that I had extensive maintenance work done in July, 1983, at which time all hoses were replaced, even though they appeared to be in order, plus other routine maintenance.

Any consumer today realizes that everything we buy has a degree of built in obsolescence but a car is one consumer purchase which is loaded in favour of the manufacturer and/or the dealer. The warranty is worded so broadly that it is open to interpretation depending on the interests of the parties involved. The extended service plan does save a consumer money, provided the problems show up within the time the plan is in force. Even with the extended service plan, the consumer is required to pay a $25.00 service charge each time work is done under this plan. These charges are in addition to the original cost of the extended service plan which, in my case, was $220.00. If I had not been able to avail myself of the services of the Ontario Motor League testing centre I would have been out of pocket a great deal more. The "$468.00 job" occurred in April, 1982, just prior to the expiry date of this plan. On one occasion I heard another customer of the same dealership ask the service representative why there was a repair bill on one of his trucks for $450.00 which occurred just after the expiry of the warranty period. His response was a shrug of the service representative's shoulders and the comment "that's the way things happen". If this response is true, then I submit it is small wonder that the North American car industry is in a bad way financially and suffering a credibility gap with the public in general. This is my first, and in all probability my last, purchase of a motor vehicle manufactured in North America. When the time comes to replace my "lemon", I doubt if I will choose a domestic car. I feel the law of averages, plus better workmanship and warranties, indicate the purchase of a motor vehicle manufactured elsewhere than in North America.

As a working, contributing member of the Canadian society I strongly resent investing my hard earned dollars to the tune of $9,328.00 in a product which has not lived up to my expectations. Instead of getting a car I could rely on to perform basic functions I have had to expend time, energy and cash, in addition to my original investment, so the motor vehicle will perform the service for which it was purchased. The stress today involved in raising a family and earning a living are sufficient. I do not need the additional hassles I have undergone because of the quality of the product available on the market for unsuspecting buyers. I realise the rule in law is caveat emptor. However no matter how much care a car buyer takes, it is still a game of Russian roulette. It would be of some assistance however if the manufacturers would label their cars by the day of production so the consumer could avoid the "Monday" or "Friday" cars which, according to the general belief of the public, leave a lot to be desired in terms of workmanship.

I believe that a statute setting out a standard of production which is acceptable would assist the unwary when they become involved in the purchase of a motor vehicle. I would only recommend that any legislation in this area be clearly written in terms which are unequivocable, unlike the existing warranties presently available.

It is not, I submit, in the public interest for the current situation to continue. It is the only consumer purchase of which I am aware that cannot be returned for credit and/or replacement if problems occur after delivery. Considering the costs involved, this hardly seems equitable. If the car manufacturers were in the position of having faulty motor vehicles returned for failure to operate in accordance with a reasonable standard, I feel certain that a lot of the problems I have experienced would disappear. Although a manufacturer relies on the materials supplied by other people or business firms, it is in my opinion the duty and responsibility of the manufacturer and/or its staff to ensure these components meet minimum standards before installing the components in new motor vehicles.

The costs in dollars to me, over and above the usual costs for gas, oil and maintenance, are as follows:

Original cost			$9,328.
Repairs to date		$828.15	
Unusual expenses:	Towing	$ 45.00	
	Extended Service Plan	$220.	
	OML Testing Centre	$ 70.00	1,163.15
			$10,491.15

It is impossible to estimate the cost physically and mentally of wondering what is going to happen next and when. At present there is a strange sound emanating from near the steering column and all my friends are predicting the next major problem will be the transmission. I am informed that if the latter occurs the cost is between $700.00 to $1,000.00 to repair.

In March, 1983, I received a bulk mailing from Ford Motor Company of Canada, Limited advising I was eligible to renew my extended service plan coverage to a total of 48 months or 80,000 kilometers, whichever first occurs. I am beyond the mileage mentioned but would like to quote the second paragraph from this bulk mailing:

> "By renewing your ESP contract, you will continue to enjoy peace-of-mind motoring, knowing that you are protected from the cost of major repair bills on covered components. The many benefits of renewing your coverage are explained in the enclosed brochure."

The cost of this additional coverage to a Granada owner is $315.00. How much better if it were not necessary to have such extended service plan contracts for new cars available. In my opinion if the product produced were better, such contracts would not be required. It is time that something is done in the area of the production and repair of motor vehicles to protect the public interest.

The attached Schedule "A" sets out a summary of the repairs effected since delivery in 1980 to my car.

Submitted by: Midge Day, PLS
January 25, 1984

SCHEDULE "A"

to submission made by M. Day on
the issue of "lemon" cars

Record of repairs made on a 1980 Ford Granada Ghia from delivery on July 25, 1980 to date

Date	Description	Cost
1980		
Oct. 27	Repair/replace differential, total parts listed $226.76 - under warranty	N/C
Nov. 13	Replace heater motor - under warranty	N/C
Dec. 31	Change oil and filter, replace driver's wiper blade, replace pass. door couper light switch, repair driver door lock, tune up special, check hesitation on acc., check oil leaks (parts $28.61)	$ 62.44
1981		
July 22	Rocker cover gasket, replace oil seals, replace spark plugs, check rustproofing (parts $32.96) - under extended service plan	30.00
Dec. 11	Checking brakes - squealing	18.00
1982		
Jan. 2	Transmission - won't come out of first	68.88
April 16	Check exhaust leak at manifolds, tighten bolts, stop lights and parking lights, signal lights, driver's courtesy light, EGR valve sticks high, trans operation shift, replace wiper blades, supply T-up paint (parts $194.79) - under extended service plan	63.31
July 15	Thermostat and gasket, hose clamp	21.24
Aug. 18	Replace front shock absorbers	47.91
Aug. 27	Repair right signal, replace R.F. socket	28.68
1983		
Feb. 7	Replace thermostat, found leak around thermostat housing and gasket	25.60
Feb. 17	Replace one vacc. cannister	38.57
May 27	Replace entire exhaust system	82.98

1983	Description	Cost
June 24	Replace spark plugs	$ 17.60
July 2	Replace heat shield on catalytic converter done by dealership because under 80,000 km.	N/C
Aug. 15	Replace two tires - badly worn; tread separating on one tire - steel belted dual radials - summer/winter	167.11
Aug. 20	Balancing two front wheels	11.98
Sept. 1	Replacing right rear bearing in wheel	82.55
Sept. 4	Replacing ignition wiring	43.32
Dec. 21	Repair and replace heater control valve vaccuum	17.98
		$828.15

Additional Expenses

Towing	$ 45.00
Extended Service Plan - Ford	220.00
OML Testing Centre	70.00

Note: Thermostat replaced again in July, 1983 - invoice not available - estimated cost $26.00 - not included above

Stephen H. Fuller
37 Mandel Crescent
Willowdale, Ontario
M2H 1B8

Ms. Eileen Berriman
Secretary, Metro Auto Watchdog Committee
Metro Clerk's Department
Metropolitan Toronto
West Second
City Hall
Toronto, Ontario
M5H 2N1

Dear Ms. Berriman:

I recently received a note from the Automobile Protection Association informing me of Mayor Lastman's Public Hearing of the committee. Unfortunately, I can't attend, so I thought I should write.

I am one of Mayor Lastman's constitutents, and, having been at one or two Council meetings previously, I am aware of the attention he—and other members of Council—pay to the expressed concerned of citizens. As have many others, I too have been unfairly treated in matters concerning the purchase and repair of automobiles. I think that the time for protective legislation is long past due, and I would strongly support any legislation in this direction. I am aware, of course, that there is some existing legislation, but I consider it to be less than effective, even though the odd garage is charged with turning back odometres and the like.

I should appreciate your bringing my concern to the attention of the Committee.

Yours truly,

Stephen H. Fuller

Stephen H. Fuller, B.Sc., M.Ed., CD*

CONSUMERS' ASSOCIATION OF CANADA

February 9 1984

Mayor M. Lastman
Automotive Watchdog Subcommittee
5100 Yonge Street, North York, M2N 5V7

Dear Mayor Lastman:

Enclosed is the text of the remarks that I made to your subcommittee on January 26, 1984 at City Hall.

At the same time, I would also like to suggest that the following points by other speakers bear investigation:

a) Body shops should be included in any warranty system
b) Consumers should have the opportunity to buy an automobile with or without warranty and the price should be adjusted accordingly
c) The arbitration mechanism should be insulated from the manufacturer. The Better Business Bureau is admirably operating the only arbitration function now but it does not meet the insulation criteria.

We applaud the initiative of your subcommittee in bringing Representative Woodcock from Connecticut to Toronto and we hope that it results in a better automotive marketplace for consumers.

Yours truly,

Teresa Comenega

CAC Toronto
Box 998, Station K
Toronto, Ontario M4P 2V3

Remarks to the Automotive Watchdog Subcommittee
of Metro Toronto on February 26, 1984
by Theresa Courdeyea, Toronto President
Canadian Association of Consumers

The Consumers' Association of Canada (CAC) is an organization which represents and serves the interests of Canadian consumers at the local, provincial, and national levels. C.A.C. is a non government, non sectarian, and non profit association of volunteers although the national level owns and publishes the Canadian Consumer magazine. I represent the local Toronto level of the association.

Automobiles are the cause of the number one complaint in the experience of the Better Business Bureau, the Ministry of Consumer and Commercial Relations, and the Consumers' Association of Canada.

At the 1981 Annual General Meeting of CAC (Ontario) the following resolution was passed:

Be it resolved that CAC (Ontario) request the Ministry of Consumer and Commercial Relations to introduce legislation which would provide protection to Ontario consumers in the purchase and repair of new and used automobiles and in their deliberations the Ministry consider the Quebec Consumer Protection

Act; in particular regulations guaranteeing

a) That existing warranties remain valid when automobiles are resold

b) That minimum periods of warranty be established for used automobiles depending on the age of the vehicle and other criteria

c) That a written estimate of the cost of repairs over $50.00 be required, and once the repairs are made, the consumer be entitled to a detailed bill and, if possible, the return of the replaced parts.

This resolution supports the concept of "lemon laws" but deals also with used cars which are the only option for some consumers as the cost of new cars escalates.

It appears to us that legislation in other jurisdictions lacks enforcement and arbitration mechanism. While these are difficult areas to resolve, and we do not have any solutions to offer, we believe that it will be worth the effort to protect consumers against unscrupulous used car dealers, and against manufacturers who must accept the responsibility when they produce poorly designed products or let defective vehicles through their assembly lines.

By the same token, such legislation must be workable and affordable, and consumers must use it responsibly.

R. Dobson
41 Stuart Cr.
Willowdale, Ontario
M2N 1A6

24/01/84

Mr. Mel Lastman
Chairman
Auto Watchdog Committee
c/o Office of the Mayor
City of North York
5100 Yonge St.
North York, Ontario
M2N 5V7

Dear sir:

Re: "Lemon Law"

Although I won't be able to join you in person on January 26th, I will be with you in spirit. A "Lemon Law" is long overdue in this Province.

Good luck to you in your campaign to introduce the automobile manufacturers to responsible corporate behaviour!

Yours truly:

R. Dobson.

APPENDIX 111

MEETING No. 3 - FEBRUARY 23, 1984

THE INDUSTRY

LIST OF PERSONS WHO MADE AN ORAL SUBMISSION

COPIES OF WRITTEN SUBMISSIONS

MEETING No. 3 - FEBRUARY 23, 1984

The following persons made an oral submission to the Committee:

Ms. Patricia Curran,
Manager, Consumer and Public Information,
Ontario Motor League

Mr. Paul Kovac, Vice-President,
KoVac/Mazda Motor Sales Ltd.

Mr. James K. Cameron,
Assistant General Counsel,
General Motors of Canada Limited,
on behalf of the Motor Vehicle Manufacturers Association

Mr. Herb Stein,President,
Plaza Pontiac Buick Limited,
on behalf of the Members of the Toronto Automobile Dealer Association
and the Members of the Automobile Dealer Associations of Ontario

Mr. Paul J. Tuz,Chairman,
Committee of Managers,
Canadian Council of Better Business Bureau

Mr. K. Brillinger, Secretary-Treasurer
Mr. Transmission International Ltd.

KoVac mazda
MOTOR SALES LTD. 47 WELLINGTON ST W. MARKHAM, ONT. L3P 1A5 TEL. 297-3777

February 15, 1984.

Ms. Eileen Berriman.
Metro Clerks Department,
2nd Floor,
City Hall,
Toronto, Ontario,
M5H 2N1

Re: Auto Watch Dog Committee.

To Whom it May Concern:

In my opinion, the legislation directed at auto repair services would be most inappropriate at the present time.

Because of modern demand of smaller, fuel-efficient cars, the domestic car industry is experiencing one of the greatest and most difficult changes in its history. As a result, we can well expect the greatest number of car "lemons" ever produced - not only by coincidence, but also by its design.

Therefore, I am suggesting that a group of government employed mechanical engineers would have the right to review any new car model in its planning stage, and would finally have to have their approval before being mass produced. This would be done in a similar way as is presently requested by the Department of Labour, to review any architectural plans before construction begins.

Car manufacturers should also assume greater responsibility towards education and up to date information to the service repair industry, which in our country offers a great opportunity for employment of young people, and to develop their skills.

These are my reasons to believe that such legislation arrived at in the car service industry would slowdown the capability for service people to follow the new car manufacturing standards.

Sincerely.
KOVAC MOTOR SALES LIMITED

Paul Kovac.

ONTARIO
MOTOR LEAGUE

TORONTO CLUB

2 CARLTON STREET
TORONTO, ONTARIO M5B 1K4

February 15, 1984

Eileen Berriman,
Metropolitan Clerk's Department,
City Hall,
Toronto, Ontario
M5H 2N1

Dear Ms. Berriman:

Enclosed is a copy of our submission to the Metropolitan Toronto Auto Watchdog Committee that will be presented by me on February 23rd.

If I can be of any further assistance, do not hesitate to contact me.

Sincerely,
ONTARIO MOTOR LEAGUE,

Pat Curran

Patricia Curran,
Manager, Consumer and
Public Information

PC:eg
Encl.
964-3170

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SUBMISSION TO:

METROPOLITAN TORONTO AUTO WATCHDOG COMMITTEE

FEBRUARY 23, 1984

ONTARIO MOTOR LEAGUE - TORONTO CLUB

The Ontario Motor League - Toronto Club in its 81st year, is a non-profit organization affiliated through the Canadian Automobile Association with automobile clubs in 110 countries throughout the world. There are approximately 2 million CAA members across Canada; 800,000 in Ontario and 370,000 serviced by the Toronto Club.

Since the Club's inception in 1903, its primary purpose has been to serve and protect the motoring public. For this reason, the Ontario Motor League welcomes this opportunity to comment on consumer protection for motorists to the Metropolitan Toronto Auto Watchdog Committee.

CAA has recognized that automotive complaints is the number one priority with our members, and in 1975 initiated the first stage of assisting our members in this area with the opening of the Car Inspection Centre. Since then we have inspected nearly 80,000 cars.

This centre provides a written report on the condition of the car and indicates the repairs which are required immediately and further advises of items that could be done at a later time. Armed with this information, the member can then request an estimate on these repairs from a service facility.

An inspection is particularly beneficial for not only repair work, but also for warranty work and prior to used car purchase. After repairs have been completed, a re-inspection can determine whether or not repairs have been performed to a satisfactory level.

The establishment of the Car Inspection Centre led to the second stage of our consumer development program with the Approved Auto Repair Service. This allows the member to take his vehicle to a garage of his choice of endorsed repair facilities that have passed a strict

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investigation as to business ethics, community reputation and quality of service. Approved garages provide members with a written guarantee of 90 days or 6,400 kilometres. They will also provide upon request a written estimate which must be within 10% of the final cost.

In the event that a dispute arises over price or quality of service, the Ontario Motor League becomes the final arbitrator. The decision is binding on both parties.

In our experience, the majority of complaints received have been the result of a lack of communication between the member and the servicing facility.

There are now 200 Approved Auto Repair Service facilities in Metro Toronto, province wide 500 and approximately 2000 across the country.

In 1979, the formation of a FACTS Division (Free Automotive Consumer and Technical Services) further developed our ability to provide our members with consumer information pertaining to the purchase of a new or used car. A highly qualified technician is on staff to provide assistance on automotive related problems as well as to offer guidelines on car purchases. Information on new car purchases is provided through the CAA Autopinion road test reports, while used car information is provided from the CAA Used Car Buyer's Guide.

While we are able to provide our members with these benefits, we recognize there is still a great concern from the general motoring public in new car warranties, used car warranties and repair warranties. The CAA and its affiliated clubs over the years have established policies and recommendations in all of these areas.

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CAA recognizes legislation is presently in place covering these areas with the Business Practices Act, the Motor Vehicle Dealers Act and the Consumer Protection Act. However, we also recognize that the administration of this legislation is extremely difficult to enforce.

Our concern with any "Lemon Law" would also be in the administration of such a law. Ultimately, the tax payer and consumer would be paying the burden of the administration. If further concerns us that 10 different "lemon laws" could be established following what appears to be the trend in the United States.

The motor vehicle purchaser is entirely at the mercy of motor vehicle manufacturers in the quality of construction of the vehicle. The manufacturer wishes to sell a vehicle for its quality engineering and lack of design defects. Thus the manufacturer has a responsibility to the consumer to provide him with a reasonable warranty against defects in workmanship and manufacture.

Warranty standards should clearly impose upon the motor vehicle manufacturers and their agents the responsibility to repair or replace defective workmanship and materials at no cost to the purchaser.

Purchasing a used car can be a very frustrating experience for the motorist if it is discovered, after the sale, that the vehicle has been subject to defective repair or maintenance workmanship or parts during its prior ownership. The prospective purchaser can test the vehicle to the best of his ability before offering to purchase; however, recent faulty maintenance or repairs may not be evident until some time later. The purchaser requires some assurance of the condition of the vehicle.

.../4

Commercial sellers of used vehicles should be required to provide a warranty commensurate with the age and/or kilometrage of the vehicle.

Such warranties should clearly impose upon the commercial seller of the used vehicle the responsibility to repair and replace defective workmanship and materials, at no cost to the purchaser.

While this would cover an automobile purchased through a motor vehicle dealer, it still leaves an area of great concern with the 43% of used cars sold privately.

We have mentioned earlier the Approved Auto Repair Service established by the Canadian Automobile Association. A further positive step would be the establishment of industry-wide warranty standards. Warranty standards should clearly impose upon the motor vehicle repair industry the responsibility to repair or replace defective workmanship and materials at no cost to the purchaser. The repairer would be responsible to:

a) provide the vehicle owner complete warranty conditions in clear and understandable language;
b) repair or replace defective workmanship or materials originating within the warranty period at no cost to the owner;
c) return replaced parts to the vehicle owner or make them available for inspection by the customer for a maximum of 72 hours following completion of all repairs.

In summation, we recognize the difficulties that some of the motoring public have experienced in purchasing new vehicles. The so-called "lemon" car is becoming a rarity with improvements in engineering and quality control. Whether or not a "lemon law" in the answer still remains a question, when looking at the potential costs to the taxpayer and consumer. We do, however, feel strongly about the need

.../5

for legislated warranty standards to be provided in clear, understandable language that require the repair or replacement of defective workmanship or materials originating withing the warranty period at no cost to the purchaser be it a new car, used car or repair work.

APPENDICES

APPENDIX "A" - Objectives of the Canadian Automobile Association

APPENDIX "B" - Canadian Automobile Association Policies and Recommendations

APPENDIX "C" - Ontario Motor League Consumer Services

APPENDIX "A"

OBJECTIVES
OF THE
CANADIAN AUTOMOBILE ASSOCIATION

The Canadian Automobile Association is the federation of all the non-profit provincial and municipal automobile clubs in Canada.

The objectives of CAA are:

- To promote, develop and implement programs and information relating to the rights, responsibilities and needs of the motorist as a consumer.
- To further the interests of the motorists generally throughout Canada.
- To maintain the rights and privileges of those who use motor vehicles.
- To promote rational legislation governing the use of such vehicles.
- To assist in and encourage the maintenance of good roads throughout Canada.
- To advocate a reasonable regard on the part of motorists for the rights of others using the highway.
- To undertake and promote publications in the interests of the Association.
- To do all such things as are incidental to or otherwise germane to the attainment of the above objectives.

4.1 NEW MOTOR VEHICLE WARRANTIES

INTRODUCTION

The motor vehicle purchaser is entirely at the mercy of motor vehicle manufacturers in the quality of construction of the vehicle. The manufacturer wishes to sell a vehicle for its quality engineering and lack of design defects. Thus the manufacturer has a responsibility to the consumer to provide him with a reasonable warranty against defects in workmanship and manufacture.

POLICY 4.1 - NEW MOTOR VEHICLE WARRANTIES

Warranty standards should clearly impose upon the motor vehicle manufacturers and their agents the responsibility to repair or replace defective workmanship and materials at nc cost to the purchaser.

RECOMMENDATION 4.1.1 - NEW MOTOR VEHICLE WARRANTIES

Provincial governments are urged to enact legislation establishing warranty standards for all newly-manufactured motor vehicles sold in Canada, which clearly imposes upon the manufacturers and their agents the responsibility to:

a) provide to the vehicle purchaser complete warranty conditions in clear and understandable language;

b) repair or replace defective workmanship or materials originating within the warranty period at no cost to the purchaser.

4.2 USED MOTOR VEHICLE WARRANTIES

INTRODUCTION

Purchasing a used car can be a very frustrating experience for the motorist if it is discovered, after the sale, that the vehicle has been subject to defective repair or maintenance workmanship or parts during its prior ownership. The prospective purchaser can test the vehicle to the best of his ability before offering to purchase; however, recent faulty maintenance or repairs may not be evident until some time later. The purchaser requires some assurance of the condition of the vehicle.

POLICY 4.2 - USED MOTOR VEHICLE WARRANTIES

Commercial sellers of used vehicles should be required to provide a warranty commensurate with the age and/or kilometrage of the vehicle.

Such warranties should clearly impose upon the commercial seller of the used vehicle the responsibility to repair or replace defective workmanship and materials, at no cost to the purchaser.

RECOMMENDATION 4.2.1 - USED MOTOR VEHICLE WARRANTIES

Provincial governments are urged to enact legislation establishing warranty standards for all used motor vehicles sold by commercial sellers and their agents, which clearly impose upon them the responsibility to

a) provide to the vehicle purchaser complete warranty conditions in clear and understandable language;

b) repair or replace defective workmanship or materials originating within the warranty period at no cost to the purchaser.

4.3 MOTOR VEHICLE REPAIR WARRANTIES

INTRODUCTION

The type of service that receives one of the highest number of consumer complaints is the repair of motor vehicles. Many consumers have developed a mistrust for the industry, which can only be satisfied by a solid assurance of honest and reputable workmanship. The Canadian Automobile Association has a program of Approved Auto Repair Services (AARS) which was pioneered in 1975 by the British Columbia Automobile Association and expanded to a national program in 1976. A further positive step would be the establishment of industry-wide warranty standards.

POLICY 4.3 - MOTOR VEHICLE REPAIR WARRANTIES

Warranty standards should clearly impose upon the motor vehicle repair industry the responsibility to repair or replace defective workmanship and materials at no cost to the purchaser.

RECOMMENDATION 4.3.1 - MOTOR VEHICLE REPAIR WARRANTIES

Provincial governments are urged to enact legislation establishing repair standards for motor vehicles which clearly impose upon the repairer the responsibility to:

a) provide to the vehicle owner complete warranty conditions in clear and understandable language;

b) repair or replace defective workmanship or materials originating within the warranty period at no cost to the owner;

c) return replaced parts to the vehicle owner or make them available for inspection by the customer for a maximum of 72 hours following completion of all repairs.

4.4 ROUTINE PREVENTIVE MAINTENANCE SERVICE

INTRODUCTION

Automobiles require regular maintenance checks to ascertain the condition of various safety and operating systems. The large number of self-serve gasoline stations in existence may have resulted in some vehicles receiving a less satisfactory number of maintenance checks. In addition, the motorist needs to be reminded of items that need attention on a regular basis.

POLICY 4.4 - ROUTINE PREVENTIVE MAINTENANCE SERVICE

Petroleum and motor vehicle industries have a responsibility to provide adequate routine preventive maintenance services to motorists.

RECOMMENDATION 4.4.1 - ROUTINE PREVENTIVE MAINTENANCE SERVICE

The retail petroleum marketing industry is urged to be mindful of the continuing needs of motorists for routine motor vehicle preventive maintenance services.

The motor vehicle and retail petroleum marketing industries are urged to take the necessary steps to ensure that facilities providing adequate routine preventive maintenance services are available to meet the needs of the motoring public, and to encourage the motoring public to be mindful of the importance of routine maintenance.

4.5 TRAINING AND LICENSING OF MOTOR VEHICLE MECHANICS

INTRODUCTION

The motor vehicle mechanic is responsible for the mechanical health of motor vehicles. The vehicle owner places his trust in the mechanic that he has diagnosed problems correctly and applied the proper repair or maintenance procedures which result in the lowest cost for the consumer. It is important that the motor vehicle mechanic have the proper training and have achieved a level of excellence that enables him to professionally perform his job. It is also important that motor vehicle mechanics be accepted across Canada, as many other professions are, in a uniform way to encourage a better understanding of the repair industry and to allow qualified professionals to migrate to new areas of the country without difficulty.

POLICY 4.5 - TRAINING AND LICENSING OF MOTOR VEHICLE MECHANICS

The training and licensing of all motor vehicle mechanics should be uniform across Canada.

RECOMMENDATION 4.5.1 - TRAINING AND LICENSING OF MOTOR VEHICLE MECHANICS

Provincial governments are urged to co-operate in adopting uniform motor vehicle mechanic licensing, which requires periodic recertification, to ensure a consistently high standard of quality and workmanship.

4.6 MOTOR VEHICLE CORROSION

INTRODUCTION

During the 1960s and early 1970s the increasing use of road salt during the winter to aid in snow and ice removal, combined with a lack of corrosion-resistant automobile design, became intolerable. Underbody and perforation corrosion reduced the useful life of automobiles to a very short period of time and the increase in unibody automobiles raised concerns about structural safety. In 1978, the federal Department of Consumer and Corporate Affairs announced the Anti-Corrosion Code for all new vehicles. The code asked for voluntary compliance from all new vehicle manufacturers and importers.

POLICY 4.6 - MOTOR VEHICLE CORROSION

Manufacturers have a responsibility to design rust-resistant vehicles and to offer effective, warranted, rust-inhibitive coatings. Aftermarket service industries also have a responsibility to offer effective, warranted, rust-inhibitive coatings.

RECOMMENDATION 4.6.1 - MOTOR VEHICLE CORROSION

Motor vehicle manufacturers and importers are urged to adopt the Anti-Corrosion Code and provide to the vehicle owner complete warranty conditions in clear and understandable language.

Aftermarket service industries offering rust-inhibitive coatings should be required to adopt national performance standards for coating materials, ensure applicator proficiency, and provide effective inspection and warranty service.

Provincial governments are urged to study the need for anti-corrosion legislation covering the performance of motor vehicle manufacturers, importers and aftermarket service industries.

Manufacturers, importers, aftermarket industries and consumer groups should co-operate to increase owner awareness of the cause, economic consideration and prevention of motor vehicle corrosion.

4.7 VEHICLE DESIGN

INTRODUCTION

The motorist does not generally consider towability, hoistability, and ease of maintenance and repair, when he is shopping for a car. For this reason the manufacturers of motor vehicles have a responsibility to produce vehicles which, due to their design, are easily handled for repair, maintenance, hoisting and towing. This will result in lower costs to the motorist by avoiding longer repair times, damage to his car, and additional charges for special towing equipment.

POLICY 4.7 - VEHICLE DESIGN

Design and construction of motor vehicles should minimize difficulties encountered in repairing, starting, hoisting and towing, and reduce the effects of collision impacts.

RECOMMENDATION 4.7.1 - VEHICLE DESIGN

Motor vehicle manufacturers serving the Canadian market should give priority, at the design stage, to towability and should ensure that all vehicles offered for sale can be easily handled without damage.

APPENDIX "C"

AUTOPINION

SERVICE POLICY:

Ontario Motor League members contemplating the purchase of a new car, may contact the Club for an "Autopinion" report on the car of their interest.

"Autopinion" is a member service which can provide members with a complete and unbiased appraisal of most new automobiles by the Technical Service Staff employed by a number of automobile clubs affiliated with the Canadian Automobile Association.

The Technical Services Staff performing the car appraisals are employed by the following automobile clubs across Canada:

Alberta Motor Association

British Columbia Automobile Association

Touring Club of Montreal

The Quebec Automobile Club

The Ontario Motor League - Toronto Club

The written appraisal is both comprehensive and completely unbiased to the extent that both the best features and the worst features of the vehicle tested are clearly and honestly stated.

Vehicles used for test purposes are provided by the individual manufacturer without obligation and on the basis that the findings of the CAA technical staff will be provided to members of the Canadian Automobile Association in a clear and unbiased manner as a consumer service.

CAR INSPECTION CENTRE

The Car Inspection Centre was built to fill a real need of our members. A need for an inspection centre that can inspect your car and give you an honest and objective report. We do not sell parts or make repairs. We do provide you with a detailed written report on the condition of your car. This information is then analyzed by a technical counselor and your written report is prepared. After consultation with one of our counselors you then take this report to a dealer, garage or service facility of your choice and have the necessary repairs made.

WHY A "COMPLETE" INSPECTION?

Knowing the condition of a car can really save you money. The amount spent for a complete inspection can mean the difference between buying a "bucket of bolts" or a good used car. It can mean having your car repaired before your warranty expires. It can mean a minor repair bill. It can mean safe driving. Knowing the condition of your car can not only save you money — it's part of being a responsible driver. A complete inspection meets Ontario Government requirements and can be used for Provincial Safety Standards Certification as required for the sale of a used car.

CONSUMER COMPLAINTS

Members of the Ontario Motor League who encounter that common problem of a consumer complaint with respect to poor workmanship, overcharging, inadequate repair service, warranty problems, etc., may contact the Ontario Motor League Free Automotive Consumer Technical Services Department for assistance and guidance. In Metro Toronto call 964-3170 or call Toll Free from anywhere in Ontario by dialing 1-800-268-7068.

The Ontario Motor League, after reviewing a complaint, will inform the member whether, in the opinion of the Club, the complaint is justified or unjustified.

If justified, the Ontario Motor League, with its consumer knowledge and relationship with the business community, will make every effort, short of civil litigation, to resolve the complaint in favour of the member.

If unjustified, in the opinion of the Club, a member will be fully informed as to the reason the claim is felt to be without justification.

CONDITIONS OF SERVICE:

- Where a complaint is justified and the Ontario Motor League has been unsuccessful in efforts to resolve the matter in favour of the member, the member will be advised as to his legal rights to pursue the matter further through civil litigation.
- The Ontario Motor League accepts no responsibility for the cost of any civil litigation.
- Members are required to obtain and supply the necessary documentation to support their complaint.
- The Ontario Motor League accepts no responsibility for any costs necessary to obtain support documentation.

OML 21-879

APPROVED AUTO REPAIR SERVICES

The Ontario Motor League has become increasingly aware that our members and the general public have difficulty determining the most reliable service outlets to take their automobiles for repairs. For this reason your Club initiated the Approved Auto Repair Services program.

The OML endorses selected auto service outlets that have passed a strict investigation by qualified OML inspectors. When the auto repair outlet passes inspection it can then display our Approved Auto Repair Services sign. Approved garages provide OML members with a written guarantee of 90 days or 4,000 miles, (6,400 kilometres) whichever comes first, on all work performed.

In the event of a dispute over price or service, the A.A.R.S. facility has agreed to let the Ontario Motor League be the final arbitrator.

A complete list of the over 350 approved auto repair service facilities in Ontario is available at all OML offices.

OML 26-583

LIEN CHECKS
MOTOR VEHICLES

SERVICE POLICY:

Ontario Motor League members considering the purchase of a used motor vehicle should first ascertain that the vehicle is free and clear of all liens or other debts registered against that vehicle. (finance charges, loans, etc.).

Lien information is available only from a central registry office of the Ontario Government. Such checks require an individual to visit a lien service office of the Ontario Government, complete the necessary form, pay a $2.00 service charge and then wait until the lien check is processed.

Ontario Motor League members are now freed from this time consuming inconvenience and may obtain information and protection against hidden liens on used motor vehicles by simply making a telephone call to the FACTS Division of the Ontario Motor League. Through the establishment of a telephone account with the Ontario Government, we can now check any liens against a potential purchase quickly and efficiently by telephone.

The $2.00 service fee charged for such checks from the Ontario Government however, must be paid and this $2.00 fee will be billed to the member using the service. There is no charge however, for the administrative costs encountered by the Club in providing this service and the only cost to a member is the unavoidable service fee charged by the Ontario Government.

BETTER BUSINESS BUREAU
OF METROPOLITAN TORONTO INC.

PAUL J. TUZ, C.M., C.D., M.B.A., D.B.A.
President

February 20, 1984

Chairman and Members,
Metro Autowatchdog Committee,
c/o Metro Clerk's Department,
Second Floor,
City Hall,
Toronto, Ontario

Chairman and Members,

Consumers are giving more thought to how they spend their hard earned dollars, and are demanding greater satisfaction from their purchases. The Better Business Bureau is experiencing an unprecedented upsurge in the demand for its mediation services in the automotive industry.

Mediation is a method of resolving consumer complaints through an impartial adjudicator selected from a Better Business Bureau roster. In the event that a settlement of the dispute cannot be reached by routine complaint procedures, these volunteers, expert in their field, conduct an inspection of the product or service provided. The mediator's recommendation is made to the Better Business Bureau and delivered to the parties involved. This service is offered at no charge to businesses and consumers, and is designed to be an alternative to the courts.

Mediation/arbitration is available to all consumers, and all businesses regarding any product or service, including the automotive industry.

The Better Business Bureau third party mediation/arbitration programme for the automotive industry, is a pilot project conducted throughout Canada from coast to coast. Since the programme's institution in the spring of 1983, in regions where automotive expert panels review the complaint, over 76% of the disputes have been settled in favour of the consumer. Recommendations have been as extreme as the granting of a new car. In cases where mediation/arbitration programmes have lay people conduct the inspection of the automobile, the percentage of settlements does not rest as heavy in favour of the consumer.

Two major automobile manufacturers have committed themselves to accept and abide by the resolutions made in the mediation process. Under the current programme, the companies have agreed to mediate any disputes involving allegations of manufacturer's responsibility with respect to defects in material or workmanship, or application of warranties for any vehicle.

Continued.......

321 Bloor Street East, Toronto, Ontario M4W 3K6 Tel. (416) 961-0083

Continued......

The mere existence of a mediation programme in the automotive industry has already made manufacturers more cautious. It has and will continue to encourage better quality manufacturing and inspection by the dealer before delivery.

The mediation service adds a new dimension to dispute settlement, and offers a fair, impartial, and quick settlement for some of the "tough to resolve" situations.

The Better Business Bureau has the facilities to implement a third party mediation/arbitration programme across Canada, and welcomes any automotive manufacturer to participate.

Provided that appropriate guidelines are published, mediation is an effective tool and negates the necessity for "lemon law" legislation, and its associated public costs. A third party programme implemented by the Better Business Bureau has and will continue to serve both industry and consumer more effectively and without demands on the public purse.

Respectfully submitted,

Paul J. Tuz
Chairman - Committee of Managers

PJT:rr

CANADIAN TIRE CORPORATION, LIMITED
BOX 770, STATION K, TORONTO, ONTARIO M4P 2V8

January 27, 1984

Metropolitan Clerk's Department
City Hall, Toronto,
M5H 2N1

Attention: Mr. W.J. Lotto

Dear Mr. Lotto:

We are in receipt of your memo of January 11, 1984 inviting Mr. J.D. Muncaster to your meeting and regret to inform you that he will not be able to attend on February 23, 1984.

We would like to express that Canadian Tire believes that those who operate within the laws and provide the consumer with good value will prosper. Obviously, this is what we have attempted to achieve over the years and believe that we, along with our Associate Dealers, have done so. There is a continuous effort at Canadian Tire to upgrade, not only the quality of our products, but also the technical skill involved to install them. The Canadian Motorists, or the public in general, decides where they will shop based on a selection criteria of needs and it is our objective to meet those needs plus all legislation controlling the Automobile Repair Industry.

Sincerely,

R.B. Summers
General Manager
Automotive Marketing
(416) 480-3153/4

RBS/sh

2180 YONGE STREET · TELEPHONE 416-480-3000 · CABLE ADDRESS "CANTIRE"

Motor Vehicle Manufacturers' Association

25 Adelaide St. East
Toronto, Canada M5C 1Y7
Tel 364-9333

Submission by the

Motor Vehicle Manufacturers' Association

to

The Metro Toronto Auto Watchdog Committee

February 23, 1984

Members: American Motors (Canada) Inc., Chrysler Canada Ltd., Ford Motor Company of Canada, Limited, General Motors of Canada Limited, International Harvester Canada, Mack Canada Inc., Paccar of Canada Ltd., Volvo Canada Ltd., Western Star Trucks Inc.

Mayor Lastman, Comptroller Faubert, Executive Alderman O'Donohue, Ladies and Gentlemen.

INTRODUCTION

The Motor Vehicle Manufacturers' Association which represents Canadian based motor vehicle producers, wishes to express its appreciation for the opportunity to present its views on the subject of repair/replace laws applicable to cars and light trucks. The Association is limiting its comments to item (a) of the Mandate of the Committee, that is, review of legislation in Canada to protect citizens with respect to mechanical problems in new automobiles. The other items of the mandate dealing with the subjects of the automobile repair industry and federal legislation are, in the view of the Association, best dealt with by others.

The Association will briefly outline repair/replace legislation passed to date in Connecticut, and the current situation in that State, review protection of consumers in Ontario, articulate the perceived problem which led to the repair/replace legislation in the U.S., and finally, propose an alternative for Ontario which would provide customers with a better solution to the perceived problem.

CONNECTICUT LAW

Generally, U.S. repair/replace laws state that a manufacturer or its dealer must repair all defects in a vehicle which are covered by the new vehicle warranty within the first 12 months or 12,000 miles. If either the manufacturer or dealer is unable to repair defects which substantially impair the use or value of a vehicle after a reasonable number of attempts, then the manufacturer must either replace the vehicle or refund the purchase price, minus an allowance for the customer's use of the vehicle. The Connecticut law defines reasonable repair attempts as 4 or more attempts to repair the same substantial defect, or the vehicle is out of service for repair for more than 30 days, in the first 12 months or 12,000 miles.

This law, which was passed in Connecticut with great fanfare, promised to end virtually all problems with new vehicles by giving customers an effective, meaningful remedy when problems were encountered.

The Association believes strongly that the legislation promised far more than it will ever be able to deliver. It led customers to believe that if they were unhappy with their new car for any reason, they could merely return their car and receive a replacement or a refund. Since the law does not deliver as perceived, Connecticut is now considering major amendments to their repair/replace legislation.

The Connecticut law has not delivered because it has not turned out to be the simplistic piece of legislation it was promised to be. A law must always be interpreted by both persons who may benefit by it, such as vehicle purchasers, and also persons who may have obligations imposed by a law, such as vehicle manufacturers. It is inevitable in the case of a law which appears to promise so much that there will be great differences of opinion as to what the law means. In order to clarify the different interpretations of a law, the parties must hire lawyers and argue the interpretations in court. And, there is the nub of the problem! The parties must end up in court. This is, of course, the position the parties were in prior to passage of the Connecticut law. When a customer felt he or she had not received the quality product that was ordered, and the manufacturer or dealer disagreed, the customer was sometimes forced to go to court to settle the matter. The Connecticut law has not changed the prior situation.

Representative John Woodcock has termed the law a dramatic success, while at the same time, he has told your Committee that he has proposed considerable amendments to the Connecticut law. The amendments he hopes will cause a speedy resolution of customer complaints, thus avoiding the need for customers to go to court.

The Association has serious reservations about the changes to the law, as we understand them, and suggest that they will not cause the Connecticut law to suddenly satisfy all people with car problems. Our reservations stem from the fact that the amended law will still encourage lawsuits with the associated costs, delays, and frustration to customers which will continue to occur with any lawsuit.

THE LAW IN ONTARIO

I wish to turn now to the legal environment in Ontario. Mr. Woodcock, during his appearance before your Committee, suggested there was no protection for the dissatisfied purchaser of a new vehicle in Ontario. We strongly disagree with him. There is in Ontario, an arsenal of legal remedies available to the purchaser of a new vehicle, or any other consumer product for that matter, if that product does not meet the customer's expectation of product performance. While the law does not provide for "goods satisfactory or the purchase price cheerfully refunded", the law does provide a myriad of legal avenues if a customer does not get what was bargained for. Briefly, lawsuits concerning defective vehicles may be brought under the following causes of action:

1) Breach of the implied warranties of merchantability and fitness of purpose contained in the Ontario Sale of Goods Act.

2) The purchaser may sue for fundamental breach of contract.

3) The purchaser may sue for breach of collateral warranty.

4) The purchaser may sue for breach of the Business Practices Act of Ontario.

Successful lawsuits for breach of the above, entitle a customer to damages for losses sustained as a result of the defective vehicle. These lawsuits may be brought in the Provincial Court, Trial Division in Metropolitan Toronto, or Small Claims Court elsewhere in Ontario. They are usually determined economically and expeditiously without the need of a lawyer. As a fifth protection to consumers the Ontario government may prosecute those who breach the Consumer Protection Act of Ontario.

While the legislature has not imposed arbitrary standards for vehicle performance, which is sensible considering the above actions, the courts have considered the facts in each case to determine whether a customer is entitled to a remedy for a defective vehicle. The decided cases have not only acted as guidelines for manufacturers in the past, but have also in many cases taught manufacturers that court imposed standards exceed the standards set forth in repair/replace legislation.

THE PERCEIVED PROBLEM

I mentioned at the outset that we would outline the problem which led to this meeting, and consideration by others of the subject of repair/replace laws. It is obvious that the purchase of a new vehicle is a very exciting experience, and customers expect new vehicles to meet ever increasing quality standards. Worldwide competition is causing automobile manufacturers to seek ever increasing quality standards, standards which will be achieved without legislation, and standards which quite simply cannot be obtained merely through legislation. We are not in business to fight with our customers. We know that poor quality products cause us to lose customers. Our Association's members know that crucial to their survival in the marketplace, is a need to produce vehicles of ever increasing value and quality to the customer. This has meant that the members have embarked on massive programs to dramatically change the way vehicles are designed, assembled and serviced, to optimize their quality. There is certainly no need for repair/replace legislation to encourage or ensure that the Association's members do everything possible to improve the quality of their products.

The Association has sought data which would indicate that there is a significant problem with new vehicle repairs. We have concluded that customers' problems are in most instances beyond the time frame of the manufacturers' responsibility, and must emanate from customers' concerns with vehicle repairs beyond the new vehicle warranty period.

However, the Association's members have recognized that they will not always see eye to eye with all their customers. This has led the Association to propose recently to the Ontario government, an alternative to legislation.

THE BETTER SOLUTION

The alternative or better solution which we have recently proposed provides a quick and impartial mechanism to solve customers' concerns about whether their new vehicles comply with the terms of the new vehicle warranty.

The Association has proposed in lieu of legislation, the undertaking of the members of the Association marketing cars and light trucks to establish mediation/arbitration programs to resolve customer complaints. We have made this undertaking with the best interests of our customers in mind, and with a clear eye to the fact that the legislated alternative is wanting for a number of reasons. Mediation/arbitration is superior to repair/replace because:

1. It does not create unrealistic expectations in the minds of anyone.
2. It is far superior to the alternative of dispute resolution which is a lawsuit.
3. Mediation/arbitration is impartial, expeditious, at no charge to the customer, informal and final.
4. It is a clear alternative to a lawsuit which a customer may easily commence at any time.
5. Finally and most importantly, it provides broader rights to a customer than those provided by repair/replace laws because it applies to vehicles beyond the new vehicle warranty period.

Some may argue that a repair/replace law is needed in addition to mediation/arbitration. We strongly disagree. We do not believe that mediation/arbitration is in the customer's best interests when it is merely used as a stepping stone to a lawsuit. We believe that the spectre of a lawsuit often acts to create an atmosphere which makes both sides to a dispute less likely to resolve the dispute at the mediation stage. This is due to the fact that when both parties are getting ready for the lawsuit, they will be more concerned about improving their legal position for the trial than attempting to resolve the matter.

This is the way we are proposing that the program will work. Any customer who is not satisfied with repairs to his new vehicle after having the problem considered by the manufacturer is entitled to have the matter reviewed by a mediator who may suggest a variety of remedies. We anticipate, based on experience to date, that most matters would be resolved at the mediation stage. If the customer is still not satisfied, the matter could be considered by an independent arbitrator or the customer would have a right to sue. Such a program would avoid the elimination of any customer rights. More importantly, we believe it would provide a mechanism to resolve complaints quickly and without the costs and emotional turmoil which a lawsuit entails for a customer.

Some may argue that a mediation/arbitration program is not enough, and that legislation is the only alternative available to Ontario. We wish to remind the Committee that there are sound recent examples of the response of the automobile industry in Canada to act short of legislation. As many may well remember, the failure of some vehicles to meet corrosion resistance expectations of customers led in the mid 1970's to extreme pressure for anti-corrosion laws in Canada. After soliciting the views of the industry and the public, the Federal/Provincial Anti-Corrosion Code for vehicles was published. This is a Code of conduct but not a law.

While automobile manufacturers responded in a variety of ways to the introduction of the Code, it is clearly apparent that the Code has quickly led to a vast improvement in corrosion resistance of new vehicles. To state the matter another way, we believe the industry is demonstrably responsive to programs put forth by government in lieu of legislation.

A second example is the adoption of the federal government fuel consumption guidelines in Canada. Manufacturers have been able to meet and exceed these guidelines in the interest of minimizing fuel consumption of vehicles to meet the conservation efforts of consumers and governments alike. Again, this has been accomplished without legislation.

CONCLUSION

In conclusion, we have provided an overview of the Connecticut repair/replace law, the legal remedies available to Ontario consumers, and our proposal for a new and innovative way to resolve customer/manufacturer disputes about whether a manufacturer has met the obligations contained in the new vehicle warranty. A blind adoption of U.S. State repair/replace laws in Ontario would not be in our customers' best interests, as such a law would create unattainable customer expectations which would only serve to encourage lawsuits. We urge the Committee to seriously consider voluntary mediation/arbitration, a better solution.

We would encourage the Committee, at the conclusion of its deliberations, to recommend that the automobile industry adopt voluntary mediation/arbitration programs in lieu of legislation to resolve customer disputes. We are confident that adoption of such programs, accompanied by the strides in improvement in vehicle quality should virtually eliminate customer dissatisfaction with new vehicles.

I would be happy to answer any questions the Committee may have.

An Address made by Mr. Herb Stein on behalf of the Members of the Toronto Automobile Dealer Association and the Members of the Automobile Dealer Associations of Ontario.....To: Mayor Mel Lastman and his "Auto Watchdog Committee" - February 23, 1984 - City Hall (Toronto)

MR. CHAIRMAN, EXECUTIVE ALDERMAN O'DONOHUE, LADIES & GENTLEMEN.

MY NAME IS HERB STEIN, I AM THE PRESIDENT OF PLAZA PONTIAC BUICK LIMITED, A GENERAL MOTORS DEALERSHIP, LOCATED AT 3400 DUFFERIN ST. IN THE CITY OF NORTH YROK. MY FAMILY AND I HAVE OPERATED THIS DEALERSHIP SINCE ITS INCEPTION 28 YEARS AGO, A LENGTHY PERIOD OF SERVICE BY ANY RETAIL BUSINESS STANDARDS....AND ONE OF WHICH WE ARE QUITE PROUD.

HOWEVER, THIS EVENING, I AM HERE AS A REPRESENTATIVE OF THE TORONTO AUTOMOBILE DEALERS ASSOCIATION, ALONG WITH THE AUTOMOBILE DEALERS ASSOCIATION OF ONTARIO. THESE TWO ORGANIZATIONS, WHOSE MEMBERS ACCOUNT FOR OVER 90% OF THE NEW VEHICLES SOLD IN ONTARIO, ARE COMPRISED OF OVER 800 FRANCHISED NEW CAR DEALERS, WITH APPROXIMATELY 200 OF THEM LOCATED IN THE GREATER METROPOLITAN TORONTO AREA. OUR TORONTO GROUP PROVIDES EMPLOYMENT FOR SOME 10,000 PERSONS AND REPRESENTS AN INVESTMENT OF MANY MILLIONS OF DOLLARS IN FACILITIES FOR THE SALE AND SERVICE OF MOTOR VEHICLES. WE ARE, THEREFORE, VITALLY INTERESTED IN THE DELIBERATIONS OF THIS COMMITTEE AND WE ARE GRATEFUL TO MAYOR LASTMAN AND TO THE ENTIRE COMMITTEE FOR PROVIDING US WITH THIS OPPORTUNITY TO PRESENT OUR VIEWS REGARDING NEW & USED VEHICLE SALES AND THE AUTOMOBILE REPAIR INDUSTRY AS IT RELATES TO THE FRANCHISED NEW CAR DEALERS IN METROPOLITAN TORONTO.

IT WOULD BE IN ORDER, NOW, TO OUTLINE BRIEFLY HOW THE NEW CAR

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RETAIL SYSTEM FUNCTIONS. NEW CAR DEALERS PURCHASE FROM THEIR MANUFACTURERS THOSE VEHICLES FOR WHICH THEY HOLD A FRANCHISE AND SELLING AGREEMENT. THE DEALER IS RESPONSIBLE FOR THE SALE OF THE VEHICLE TO THE CONSUMER AND TO PROVIDE WARRANTY SERVICE AS SPECIFIED IN THE POLICIES AND PROCEDURES ESTABLISHED BY THE MANUFACTURER. THE DEALER, THEREFORE, ADMINISTERS THE WARRANTY ON BEHALF OF THE MANUFACTURER, BUT ONLY WITHIN THE LIMITS PROSCRIBED BY THEIR FACTORIES. IN OTHER WORDS....WE DO NOT HAVE CARTE BLANCHE TO SPEND THE MANUFACTURER'S MONEY....WE WORK WITHIN A SYSTEM OF AUTHORIZATION. AS THE MIDDLE-MAN IN THE PROCESS, WE ARE OFTEN PLACED IN THE UNENVIABLE POSITION OF BEING THE BEARER OF BAD TIDINGS, WHEN A REPAIR IS NOT COVERED BY THE WARRANTY OR THERE IS A CONDITION THAT IS CONSIDERED STANDARD TO THE FACTORY, BUT UNSATISFACTORY TO AN OWNER. I MAKE THIS POINT SO THAT IT WILL BE UNDERSTOOD THAT, ALTHOUGH WE DEALERS MAY HAVE DIFFICULTIES OF OUR OWN IN OUR SERVICE DEPARTMENTS, WE ARE CERTAINLY NOT AT FAULT FOR A GREAT MANY PROBLEMS THAT OWNERS MAY ENCOUNTER WITH THEIR VEHICLES.

OURS IS A HIGHLY COMPETITIVE INDUSTRY AND SATISFYING OWNERS OF VEHICLES HAS BECOME THE MAJOR COMPETITIVE ADVANTAGE THAT CAN BE ACHIEVED IN THE MARKET PLACE. RECOGNIZING THIS, OUR DEALERS AND THEIR MANUFACTURERS HAVE PLACED GREATER EMPHASIS ON SERVICE THAN EVER BEFORE. THE NEW TECHNOLOGY NOW BEING MARKETED BY THE MANUFACTURERS REQUIRES INTENSIFIED TRAINING OF OUR SERVICE TECHNICIANS AND THIS TRAINING IS BEING PROVIDED CONTINUOUSLY BY OUR

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FACTORIES, AS WE SUPPLY THE MANPOWER TO DIAGNOSE AND MAINTAIN THESE COMPLEX MACHINES. IT IS ONLY THROUGH OUR DEALERSHIP SERVICE PERSONNEL THAT THIS EDUCATION PROCESS TAKES PLACE IN THE REPAIR INDUSTRY.

MANY DEALERS AND THEIR MANUFACTURERS HAVE ESTABLISHED COMPLAINT HANDLING PROCEDURES WHICH PROVIDE VEHICLE OWNERS WITH IMPROVED MEANS OF SETTLING DIFFERENCES. BY WAY OF ILLUSTRATION, GENERAL MOTORS, IN ITS 1984 WARRANTY INFORMATION BOOK, DETAILS A 3-STEP PROGRAM FOR THE RESOLUTION OF DISPUTES:

1) DISCUSS THE PROBLEM WITH THE DEALER MANAGEMENT, PREFERABLY THE DEALER PRINCIPAL HIMSELF.
2) IF NOT RESOLVED, CONTACT CUSTOMER SERVICES AT THE ZONE OFFICE - THE ADDRESS AND TELEPHONE NUMBERS OF ALL SUCH OFFICES ARE INDICATED IN THE BOOK.
3) IF STILL UNRESOLVED, THE OWNER IS ADVISED OF AN ARBITRATION AND MEDIATION PROGRAM, ADMINISTERED BY THE B.B.B., THAT IS AVAILABLE TO HIM IF HE SO CHOOSES.

DEALERS KNOW THAT IT IS IN THEIR OWN BEST INTERESTS FOR THE RETENTION OF CUSTOMER GOODWILL TO RESOLVE DISPUTES THEMSELVES WHENEVER POSSIBLE, AND, IN FACT, MOST COMPLAINTS ARE RESOLVED AT THAT LEVEL. BUT....WHAT IF THE OWNER IS STILL NOT SATISFIED? WHAT REMEDIES ARE THEN AVAILABLE TO HIM?

THE MANDATE OF THIS COMMITTEE INCLUDES THE REVIEW OF EXISTING LEGISLATION, COVERING THE AUTOMOBILE REPAIR INDUSTRY IN THE PROVINCE OF ONTARIO AND THE METROPOLITAN TORONTO AREA. WE BELIEVE THAT THERE IS PRESENTLY IN PLACE A WIDE RANGE OF LEGISLATION AND

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REGULATIONS TO PROTECT THE CONSUMER IN THE PURCHASE AND REPAIR OF A VEHICLE THROUGH A NEW CAR DEALER.

THERE ARE THREE ACTS OF LEGISLATION THAT PROVIDE THE PRIMARY PROTECTION & RECOURSE FOR THE AUTOMOBILE BUYING PUBLIC.

ONE IS THE SALE OF GOODS ACT. AMONGST SEVERAL IMPLIED WARRANTIES PROVIDED IN THIS ACT, PERHAPS THE MOST IMPORTANT IS ONE STATING THAT WHERE THE CONSUMER "EXPRESSLY OR BY IMPLICATION" MAKES KNOWN TO THE VENDOR THE PARTICULAR PURPOSE FOR WHICH THE GOODS ARE REQUIRED...THERE IS AN IMPLIED CONDITION THAT THE GOODS WILL BE "REASONABLY FIT" FOR SUCH PURPOSE. THIS SITUATION OCCURS, FOR EXAMPLE, WHEN A CONSUMER MAY PURCHASE A NEW OR USED VEHICLE FOR A PARTICULAR PURPOSE WHICH IS EXPLAINED TO THE VENDOR BEFORE MAKING THE PURCHASE. IN THE EVENT THAT THE VEHICLE SUBSEQUENTLY PROVES TO BE UNFIT FOR SUCH PURPOSE, THIS BREACH GIVES RISE TO A CLAIM FOR DAMAGES BY THE CONSUMER.

THE SECOND ACT IS THE BUSINESS PRACTICES ACT. THIS ACT APPLIES TO BOTH VEHICLE PURCHASERS AND REPAIRS. I WOULD LIKE TO QUOTE HERE FROM "THE CONSUMERS' GUIDE TO THE BUSINESS PRACTICES ACT", PUBLISHED AND DISTRIBUTED BY THE MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS. UNDER THE HEADING "IF YOU'VE BEEN TAKEN, TAKE SOME ACTION"......IT EXPLAINS "THE ACT WORKS IN TWO WAYS. FIRST IT SETS OUR CLEARLY WHAT UNFAIR BUSINESS PRACTICES ARE, AND, SECOND, IT SETS OUT A STRAIGHTFORWARD METHOD BY WHICH YOU CAN CLAIM

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REDRESS IF YOU HAVE BEEN VICTIMIZED BY AN UNFAIR BUSINESS REPRESENTATION".

IF YOU THINK THAT A SALESPERSON HAS USED A FALSE, MISLEADING, DECEPTIVE OR UNCONSCIONABLE SALES PITCH ON YOU, THE BUSINESS PRACTICES ACT GIVES YOU THE RIGHT, BACKED BY LAW, TO:

i) ASK THE BUSINESS TO RESCIND THE DEAL
ii) ASK THE COURT TO RESCIND THE AGREEMENT IF THE BUSINESS REFUSES TO
iii) ASK THE ONTARIO MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS TO MEDIATE THE DISPUTE".

WITHOUT QUESTION....THIS IS A POWERFUL PIECE OF PROTECTIVE LEGISLATION.

THE THIRD ACT, AND THE MOST IMPORTANT IN MANY RESPECTS TO OUR DEALERS, IS THE MOTOR VEHICLE DEALERS ACT OF ONTARIO, ADMINISTERED BY THE REGISTRAR OF MOTOR VEHICLE DEALERS IN THE MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS. THIS ACT SETS OUT REGULATIONS AND CONTROLS FOR RETAILERS OF MOTOR VEHICLES. ITS MAIN PROVISIONS ARE:

a) THE REGISTRATION OF ALL DEALERS & SALESMEN
b) IT PROVIDES REQUIREMENTS FOR DEALER PREMISES AND DEALER SERVICE FACILITIES
c) IT PROVIDES FOR FULL DISCLOSURE IN THE APPROVED SALES AGREEMENT FORMS USED IN ALL VEHICLE SALES
d) IT PROVIDES REQUIREMENTS FOR TRUTH AND TOTAL ACCURACY IN DEALER ADVERTISING

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e) IT PROVIDES VARIOUS PROTECTION MEASURES FOR CUSTOMER DEPOSITS ON VEHICLE PURCHASES THROUGH TRUST ACCOUNTS.

THE REGISTRAR ADMINISTERS COMPLAINTS RELATING TO DEALER SELLING AND SERVICE ACTIVITIES, AND, BECAUSE OF HIS AUTHORITY TO RECOMMEND SUSPENSION OR EVEN CANCELLATION OF DEALER LICENSES, BELIEVE ME GENTLEMEN, WHEN THE REGISTRAR'S OFFICE NOTIFIES A DEALER OF A COMPLAINT OR PROBLEM, HE RESPONDS QUICKLY. THUS...THE REGISTRAR, THROUGH THIS ACT, HAS BECOME A POTENT FORCE IN THE MEDIATION OF DISPUTES. SINCE IT IS OFTEN STATED THAT LEGAL COSTS ARE PROHIBITIVE TO CONSUMERS IN PURSUING THEIR CLAIMS....I WISH TO POINT OUT THAT MEDIATION PROCEDURES THROUGH THE REGISTRAR'S OFFICE INCUR NO COSTS ON THE PART OF THE CONSUMER, AND THAT MEANS NO MEMBERSHIP FEES ARE REQUIRED EITHER.

SHOULD THE OWNER CHOOSE TO TAKE LEGAL ACTION, OF COURSE HE CAN USE THE SMALL CLAIMS COURT.....WHICH IN METRO TORONTO HEARS CASES UP TO $3,000.00. THIS CAN BE ACCOMPLISHED AT VERY LITTLE COST TO THE CONSUMER.

ON THE SUBJECT OF USED VEHICLE SALES, THERE IS UNQUESTIONABLY FAR GREATER PROTECTION FOR THE BUYING PUBLIC, WHEN THEY PURCHASE FROM A NEW CAR DEALER, BECAUSE OF LEGISLATIVE FACTORS ALREADY MENTIONED, AS WELL AS GUARANTEES OF CLEAR TITLE AND ODOMETER READINGS. AND YET I MUST POINT OUT THAT IN 1980, THE LAST YEAR FOR WHICH DATA IS AVAILABLE, OF 1,670,000 USED VEHICLES SOLD IN ONTARIO, 1,014,000, OVER 60%, WERE SOLD PRIVATELY BETWEEN INDIVIDUALS,

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THEREBY PROVIDING THE PURCHASER WITH NONE OF THE PROTECTION INHERENT IN THE MOTOR VEHICLE DEALERS ACT. PERHAPS, THE COMMITTEE SHOULD DIRECT SOME OF ITS ATTENTION TO THAT ISSUE.

ON JANUARY 26th, LAST, THIS COMMITTEE HEARD MANY SAD STORIES FROM OWNERS WHO WERE DISSATISFIED WITH THEIR VEHICLES, AND WITH THE DEALERS' EFFORTS TO REPAIR THEM. FROM THEIR DESCRIPTIONS OF THEIR ACTIONS, OUT OF 16 OWNERS, I BELIEVE ONLY ONE STATED THAT HE HAD BROUGHT HIS PROBLEM TO THE ATTENTION OF THE MINISTRY. GENTLEMEN....WE BELIEVE THAT THE SYSTEM IS THERE FOR THE BENEFIT OF THE PUBLIC, BUT THAT THEY ARE GENERALLY UNAWARE OF THE SERVICES AVAILABLE TO THEM. OBVIOUSLY, THERE IS A NEED FOR BETTER COMMUNICATION BETWEEN THE MINISTRY AND THE CONSUMERS OF ONTARIO.

WE KNOW THAT THE PRESENT LEGISLATION WORKS. WE SAW AN EXAMPLE OF THAT A COUPLE OF YEARS AGO WHEN SOME TRANSMISSION REPAIR SHOPS IN THIS PROVINCE WERE DISCIPLINED UNDER THE BUSINESS PRACTICES ACT. IT IS INCONCEIVABLE TO OUR ASSOCIATION THAT A NEW CAR DEALER WOULD CONSCIOUSLY CONSPIRE TO "RIP-OFF" THE CUSTOMER THROUGH THE SALE OR REPAIR OF A VEHICLE. HIS ENTIRE BUSINESS WOULD BE PUT IN JEOPARDY WITH THE POSSIBLE SUSPENSION OR CANCELLATION OF HIS LICENSE BY THE REGISTRAR. THAT IS NOT TO SAY THAT WE DO NOT MAKE ERRORS IN OUR SERVICE SHOPS. THE HUMAN ELEMENT IS ALWAYS PRESENT AND UNFORTUNATELY....THE POSSIBILITY OF INCORRECT DIAGNOSIS OR POOR WORKMANSHIP CERTAINLY EXISTS. BUT OUR DEALERS ARE STRIVING TO OVERCOME THESE DEFICIENCIES. WE DEVELOPED NEW PROGRAMS WITH

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THE PROVINCE FOR THE TRAINING OF APPRENTICE MECHANICS AND THEIR CERTIFICATION OF QUALIFICATION. AT OUR OWN EXPENSE, WE SEND OUR TECHNICIANS TO THE FACTORY TRAINING AND UPGRADING PROGRAMS. MOST DEALERS HAVE A GUARANTEED REPAIR POLICY COVERING A MINIMUM OF 90 DAYS OR 6,000 KM, AND WE ARE CONSTANTLY WORKING TO DEVELOP BETTER COMMUNICATION BETWEEN OUR SERVICE PERSONNEL AND THE CUSTOMER IN ORDER TO IMPROVE DIAGNOSIS AND THE RESULTANT REPAIRS.

FINALLY....OUR ASSOCIATION, THROUGH ITS LEGISLATIVE COMMITTEE HAS FOR MANY YEARS WORKED CLOSELY WITH THE MINISTRY AND THE REGISTRAR'S OFFICE IN ASSISTING WITH THE DRAFTING OF REGULATIONS AND OPERATING PROCEDURES FOR EXISTING LEGISLATION, AS WELL AS ANY LEGISLATION UNDER CONSIDERATION. THAT CONCERNS OUR INDUSTRY. (WE WOULD BE PLEASED TO EXTEND THE SAME SPIRIT OF CO-OPERATION TO YOUR COMMITTEE AS WELL).

GENTLEMEN........OUR POSITION CAN BE SUMMARIZED BEST BY STATING.... MOST EMPHATICALY...TO THIS COMMITTEE---THAT WE SUPPORT ANY PROGRAM THAT BENEFITS OUR CUSTOMERS, IS COST-EFFECTIVE AND IS FAIR TO ALL PARTIES CONCERNED.

THANK YOU FOR YOUR ATTENTION!!!

Management Associates Ltd.

P.O. Box 294, Kleinburg, Ontario, L0J 1C0, Canada
Phone: (416) 851-1118

February 29, 1984

Mr. Mel Lastman, Chairman
Auto Watchdog Committee
c/o Metro Clerks' Department
2nd Floor, City Hall
TORONTO, Ontario
M5H 2N1

Dear Mr. Lastman:

As Executive Director of the newly formed Used Car Dealers Association of Ontario, I represent the interests of (to-date) more than fifty registered used car dealers in the Province of Ontario. More are joining every day, and I hope soon to have a membership numbering in excess of 1,000.

As successful, professional businessmen, we are striving to improve our public image, and to internally strengthen our industry.

Because we are new, we were unable to prepare our presentation in time for the public meeting held by your committee on Thursday, February 23, 1984.

However, we do have some thoughts and comments which we hope you and your committee members will consider, and have included them in the attached discussion paper.

If you have any further questions or comments, please contact me.

Yours truly,
USED CAR DEALERS ASSOCIATION OF ONTARIO

Henry Wittenberg
Executive Director

HW/mlv
Att.

USED CAR DEALERS ASSOCIATION OF ONTARIO

P.O. Box 294

KLEINBURG, Ontario

LOJ 1CO

416-893-1689

Discussion Brief to the Auto Watchdog Committee Chairman and Members on Repair/Replacement Legislation

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USED CAR DEALERS ASSOCIATION OF ONTARIO

Discussion Brief to the Auto Watchdog Committee Chairman and Members on Repair/Replacement Legislation

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1. INTRODUCTION

The Used Car Dealers Association of Ontario is pleased to offer this discussion brief for the consideration of the Auto Watchdog Committee.

Our Association is in its embryonic stage. Since the autumn of 1983 a steadily growing group of used car dealers have been meeting and working to develop the association. As an organization, we are developing a code of ethics, a process to police the code, and effective association by-laws. Our over-riding objectives will be to internally strengthen our industry and to improve our public image. We want to work with all levels of government and interested consumer groups towards the betterment of the industry. Our members will be striving to make the greatest contribution possible to the safety and welfare of the public in the purchase of the industry's products and services.

2. REPAIR/REPLACEMENT LEGISLATION

(a) General Overview

Consumers are our customers and as such, we are very concerned that they may not be totally satisfied with our products and services. Currently, we believe that there is some dissatisfaction with the automobile industry among the buying public. Obviously the causes of this dissatisfaction should be determined and resolved.

This last statement raises our first area of concern. To the best of our knowledge, complete studies of the root problems have not occurred. Are the

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problems real or perceptual? Are they in specific segments of the industry or throughout it? Are the problems increasing? Such, and other, questions need to be answered. Instead, isolated incidents of problems often come to light and are treated as if this is the norm for the entire industry. We believe dissatisfied consumers are only a very small percentage of all used car purchasers, and within this group not all complaints are legitimate.

The term "Lemon Law", has been used to describe legislation which involves three distinct segments of the automobile industry; new car sales, used car sales, and repairs. Naturally, our prime area of interest is used car sales. In this area there are three distinct sub-sections; a) licensed dealer sales, b) private individual sales, and c) "curb-sider" sales.

"Curb-sider" is a term used by our section of the industry to define a person who from a private residence, with no license, buys and sells cars for profit. Private sales differ because in that case a person is only selling an extra car to recover his investment in it. It has been estimated that licensed dealer sales account for approximately one-third of all sales in Ontario, with private and "curb-sider" sales accounting for the balance.

(b) USED CAR SALES OVERVIEW

In the used car business there will be, as in any field, some unethical businessmen. However, there is nothing but the public's stereotyped image of the used car salesman to suggest a greater than normal incidence of this type of businessman in our industry. With the majority of used car dealerships, when a problem arises, it can be best resolved at the dealer level. If dealing with an unethical businessman, legal remedies are available to the consumer. Existing legislation, such as the Sale of Goods Act, the Consumer Protection Act and our common law precedents protect Ontario consumers. With

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easy, inexpensive access to the small claims courts the legal process has become much more accessible and affordable to the general public. Is more legislation needed to further complicate these issues, or do we need greater awareness of existing rights?

It seems possible that private sales, especially those of "curb-siders", are an area in which consumers could benefit from legislation in order to get adequate remedies from the court.

Increased policing of this private sale area of the business could be indirectly achieved by an annual vehicle safety certification process instead of the present "one-time-when-sold" process. Many other jurisdictions have such a system for cars once they are of a certain age. Under such a system, a buyer of a used car at least has an independent and annual appraisal of the car's road worthiness.

3. CONCLUSION

None of our positions are fixed. Our discussion brief merely illustrates the situation as we see it. We would like to get involved and work with the various concerned groups. Our objective is the same as yours - satisfied and happy consumers. Let us work together to resolve the matter. Co-operation, open lines of communication and encouragement are the ways be believe, as legitimate businessmen in the community, that solutions can be found.

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APPENDIX I - SUGGESTIONS FOR FUTURE STUDY

1.) Involve industry, consumer groups and government in committee work to more adequately study the root issues involved.

2.) The Used Car Dealers Association of Ontario wishes to complete the development of its Code of Ethics, gain the support of others for it and then with the aid of these same involved agencies, police them.

3.) In co-operation with government, industry and consumer groups, develop a public education program to inform consumers and the industry itself about their existing rights and obligations.

4.) Encourage the industry to voluntarily review internal dispute resolution procedures.

5.) Increase the limit on Small Claim Court cases in all of Ontario so that a consumer can get legal remedies to any dispute without excessive legal costs.